

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X  
:  
ROCHELLE RAMOS,  
Plaintiff,  
07-CV-1250  
-against- :  
United States Courthouse  
Central Islip, New York  
COUNTY OF SUFFOLK, et al  
Defendants. :  
November 18, 2009  
- - - - - X 9:30 a.m.

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE ARTHUR D. SPATT  
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Plaintiff: JON L. NORINSBERG, ESQ.  
BENNETTA JOSEPH, ESQ.  
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For the Defendant: CHRISTINE MALAFI  
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Proceedings recorded by mechanical stenography.  
Transcript produced by computer.

**Rickenbacker - Direct/Joseph**

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1 (The following occurred out of the presence of  
2 the jury.)

3 THE COURT: Another subpoenaed record came in  
4 this morning. Do you want to pick it up?

5 MR. NORINSBERG: Yes, your Honor, thank you.

6 THE CLERK: Jury entering.

7 (Whereupon, the jury entered the courtroom.)

8 THE COURT: Good morning, members of the jury.

9 THE JURY: Good morning.

10 THE COURT: Please be seated.

11 Thanks again for your very diligent conduct,  
12 your punctuality and I've noticed how attentive you have  
13 been to the trial, which is greatly appreciated.

14 You may proceed, Ms. Joseph.

15 MS. JOSEPH: The plaintiff calls Lowrita  
16 Rickenbacker.

17

18 **LOWRITA RICKENBACKER,**

19 called as a witness, having been first  
20 duly sworn, was examined and testified  
21 as follows:

22 THE CLERK: Please state your name and spell  
23 your first name and last name slowly for the record.

24 THE WITNESS: My name is Lowrita Rickenbacker.

25 THE COURT: Do you want to have a seat and speak

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1 into the microphone, please.

2 THE WITNESS: My name is Lowrita Rickenbacker.

3 I live in 30 Wallace --

4 THE COURT: No. How do you spell your name?

5 THE WITNESS: L-O-W-R-I-T-A. Rickenbacker,

6 R-I-C-K-E-N-B-A-C-K-E-R.

7 THE COURT: You may proceed.

8

9 DIRECT EXAMINATION

10 BY MS. JOSEPH:

11 Q. Good morning, Ms. Rickenbacker.

12 Where do you live?

13 A. At 30 Wallace Street, Freeport, New York.

14 Q. Are you married?

15 A. I'm married, but I'm separated.

16 Q. Do you have any children?

17 A. I have five wonderful children. My oldest is 25,

18 Natasha.

19 THE COURT: I can't what you're saying.

20 A. My oldest is 25. Her name is Natasha.

21 THE COURT: You say you have five children and

22 your oldest is 25.

23 THE WITNESS: Yes, sir.

24 My second oldest is 23. Her name is Sonya. My

25 third oldest is Felicia. She's 21. My fourth oldest is

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1 19. His name is Duane. And my last child name is Maya.  
2 She's 17.

3 Q. What are your children doing now? Do they live with  
4 you?

5 A. No. My son is in New York with my brother. My  
6 oldest daughter works for an airline in Atlanta, Georgia.  
7 My second oldest is a stay-at-home mom. She has two  
8 children. My third oldest is currently -- she was  
9 currently going to school for fashion merchandising. She  
10 was in her third year. My fourth oldest son is in BOCES  
11 in Dix Hills. He's studying -- a technical school. He's  
12 studying to be a barber. And my 17 year old Maya is in  
13 high school.

14 Q. Are you a little nervous, Ms. Rickenbacker?

15 A. Yeah, I'm upset.

16 Q. Just take your time and we'll go through things  
17 slowly.

18 Tell the jury a little bit about yourself. Tell  
19 us about your educational background.

20 A. I have a GED and some college. I have horticulture  
21 technology, and I have a certificate in paralegal studies.

22 Q. And tell them about your work history.

23 A. I worked for Newsday early in my marriage. The  
24 latter years of my employment I worked for Friendly Home  
25 Realty as a foreclosure specialist and subsidized housing

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1 specialist.

2 Q. Are you currently working now?

3 A. I'm currently unemployed but proceeding to be  
4 gainfully employed in the future.

5 Q. Directing your attention to the year of 2005, did you  
6 ever make complaints against a man named Gary Feinberg?

7 A. Yes, I did.

8 Q. And what were those complaints?

9 A. That Gary Feinberg was touching me inappropriately  
10 during his examinations at the Riverhead jail.

11 Q. When did this inappropriate touching begin?

12 A. I would say February 2005.

13 Q. And when did it end?

14 A. January 2006.

15 Q. And during this period of time, about how often did  
16 Gary Feinberg touch you inappropriately?

17 A. A lot of times. It's too many times actually to give  
18 an accounting.

19 Q. Directing your attention to the first time in  
20 February of 2005, you mentioned that this was at the jail  
21 facility?

22 A. Yes, it was.

23 Q. Which facility was that?

24 A. Riverhead.

25 Q. And why were you at Riverhead?

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1 A. I had a federal violation for violation of probation,  
2 and I had a possession of a forged instrument.

3 Q. And for clarification, is Riverhead the same as  
4 Suffolk County jail?

5 A. Yes, it is.

6 Q. Now, was that the first time that you've been  
7 incarcerated?

8 A. No. I've made mistakes in my life.

9 Q. Focusing your attention back to Gary Feinberg.

10 Where did you come into contact with him in  
11 February of 2005?

12 A. In the medical unit at the Riverhead jail.

13 Q. Okay. Please just speak up and into the microphone.  
14 I want to make sure the jury hears you.

15 A. At the medical unit at the Riverhead jail.

16 Q. And why were you in medical?

17 A. I had a back injury in which I had to have a  
18 discectomy and I had to have a -- a bone that had broken  
19 off and it was lodged between my sciatic nerve and my  
20 vertebrae and I had that removed, and I have been having  
21 sciatic nerve damage ever since.

22 I have a permeating pain that goes through my  
23 hip, around my buttocks and down to my -- and it's a  
24 constant pain when I'm going through a situation with my  
25 injury.

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1 Q. Now, did Mr. Feinberg examine you in medical that day  
2 in February of 2005?

3 A. Yes, he did.

4 Q. Before the examination began, was the door to the  
5 examination room open or closed?

6 A. It was closed.

7 Q. Before the examination began, was there anyone else  
8 inside the examination room?

9 A. No.

10 Q. Please tell the jury about that exam.

11 MS. FLYNN: Objection.

12 THE COURT: Objection to what?

13 MS. FLYNN: May we have a sidebar, Judge?

14 THE COURT: All right. Come up.

15 (Continued on next page.)

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1 (Whereupon, the following occurred at sidebar.)

2 MS. FLYNN: Her statement's already in evidence  
3 and this is just inflammatory to the jury.

4 THE COURT: What's just inflammatory?

5 MS. FLYNN: Her testimony about what happened.

6 THE COURT: I didn't hear what happened in  
7 detail yet and I'm waiting to hear it.

8 That objection is overruled.

9 MS. FLYNN: All right, Judge.

10 THE COURT: I'll let her go into great detail.

11 MS. FLYNN: Thank you, Judge.

12 (Continued on next page.)

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1 (Whereupon, the following occurred in open  
2 court.)

3 BY MS. JOSEPH:

4 Q. Okay, Ms. Rickenbacker, if you can just please  
5 continue, please describe for the jury what took place in  
6 that examination with Gary Feinberg?

7 A. I came in for an examination. Gary Feinberg, he  
8 asked me to lie back on the table. So I laid down on the  
9 table and he started to, like, push my stomach, you know,  
10 and, like, pushed me in the chest in different areas and  
11 asked me how did I feel. And then as he was checking my  
12 breasts, he would sweep across my nipples like this with  
13 his thumbs.

14 Q. Indicating a circular motion?

15 A. Yes.

16 So I laid there. He would tell me to, okay,  
17 like, lift up my leg and he would push it in and pull my  
18 leg out. Lift my other leg and push it in and pull my leg  
19 out. Then he would ask me to get on my all fours on top  
20 of the examining table. He would start from behind my  
21 neck and worked his way down to my shoulders and like  
22 massaging motion, and then he would come down, like, to my  
23 mid back and then he would again put his hand around me  
24 and sweep my nipple with his thumbs.

25 At that point my nipples would become erected

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1 and he would then continue to work down to my lower back  
2 and asked me how does that feel, how does this feel, how  
3 does that feel? When he would get down to where my  
4 buttocks is, I'm on all fours, he would do, like, a  
5 sweeping motion to the sides of my buttocks like this and  
6 then he would take his hand and touch me, like, go in  
7 between my legs like to the front of my vagina and sweep  
8 through back to my ankles, and he'd just come back and ask  
9 me how does that feel. And he keeps touching me that way.

10 That's about it.

11 Q. And you mentioned at some point Gary Feinberg asked  
12 you to lay down on the examination table?

13 A. Okay. When I was laying on the examination table,  
14 like, when he was checking my front, my hands would be  
15 along the sides holding onto the table because the table  
16 is about maybe that wide, so I would hold on. And as I  
17 was holding on I would feel his -- him grinding on my --  
18 like, my knuckles, and I would take my hands and take them  
19 and put them in front of me like this.

20 Q. Indicating for the record, a crossing motion across  
21 your chest.

22 A. He would take my wrists and fold both my hands along  
23 the side of the table. I would feel his penis, like, on  
24 my hands. So I would move my hands and he would take my  
25 hands back, put them back on the side of the table.

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1 Q. When you said you felt his penis on your hands, how  
2 did you know that it was his penis?

3 A. Because it was erect, it was hard on my hand. You  
4 can feel it on the back of your hand. He was, like,  
5 grinding it on my hand.

6 Q. And when you testified that you tried to move your  
7 hands away and he would put them back down, describe for  
8 the jury how he would hold you to do this.

9 A. How he would hold my hands?

10 Q. Exactly.

11 A. He would grab my wrists, both sides, and he would  
12 uncross them and set them back down to the sides of the  
13 table.

14 Q. What was going through your mind when he was doing  
15 these things during the exam?

16 A. I was just laying there. I just laid there. I  
17 didn't know what to do. He's a doctor.

18 Q. When you say he was a doctor, at that point in time  
19 were you under the impression that he was a doctor?

20 A. That's what they told me he was.

21 Q. Did you later come to find out what his actual title  
22 was?

23 A. A physician assistant.

24 Q. So when you were in the room, did he ever say  
25 anything to you besides how does it feel?

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1 A. No. He just kept touching me.

2 Q. Do you need a moment?

3 (Pause.)

4 I'm going to continue, okay?

5 A. Yes.

6 Q. When he first touched you inappropriately in this  
7 exam, did you express any concerns to Gary Feinberg?

8 A. The first exam?

9 Q. Right. The first time that he did it.

10 A. No, I didn't say anything.

11 Q. When you left that day, did you say anything to  
12 anyone?

13 A. That day, no, I didn't say anything that day.

14 Q. Why not?

15 A. Because I just felt uncomfortable. I didn't realize  
16 at that time that something was wrong with that. I just  
17 felt uncomfortable, but you know what I'm saying, he's a  
18 doctor. I thought that maybe that was a part of the  
19 examination, you know. I didn't know at that time -- that  
20 day, I did not know.

21 Q. Did there come a time when you became more certain  
22 that what he was doing was inappropriate?

23 A. Yes. Because --

24 Q. Tell us about that exam. Why were you in medical  
25 that day?

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1 A. My back again for examination. And this time, like I  
2 mentioned before, the same way he was touching me, at this  
3 time I was on all fours, and he came from behind, like he  
4 was right here, come up here and he said, you are so sexy.  
5 So then I turned around, like, I couldn't believe what I  
6 was hearing and when I turned to look at his face, he  
7 kissed me, like, on my lips? Then I -- then I knew that  
8 the previous examination was inappropriate touching. It  
9 wasn't until he did that that I knew now for sure that  
10 this was not -- you know, this wasn't appropriate.

11 THE COURT: When did this happen?

12 THE WITNESS: It was in 2005. I believe it was  
13 like February, something like that, June.

14 Q. Now, how did you react when he kissed you during that  
15 examination in June of 2005?

16 A. I was like, oh, my God. I didn't say anything. I  
17 was like, oh, my God, to myself. I didn't know what to  
18 say. I was, like, stunned, like, what do you say, you're  
19 in jail, like, what do you say?

20 Q. Did you remain in the examination room after he  
21 kissed you?

22 A. No. I just got up and I said thank you and I left.  
23 I said I had enough, and I left.

24 Q. Now, in addition to the inappropriate touching you  
25 just described, did Gary Feinberg touch you

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1     inappropriately in any other way?

2     A.    Yes.

3     Q.    Turning your attention to sometime after June 2005,  
4     tell us what happened in that examination.

5     A.    This examination I came in and he reached over, like,  
6     on the counter, where, like, you know, gauze and different  
7     surgical things and he picked up a packet, it was like a  
8     gel.

9     Q.    Now, just so the jury -- I don't want to cut you off,  
10    but just so the jury understands, when he's reaching over  
11    for the gauze, where are you in the room?

12    A.    I'm laying back again on the examination table.

13    Q.    What are you wearing at this point?

14    A.    I had my greens on, but they dressed the women in  
15    baggy greens. The bottom part, he pulled out my legs  
16    straight up, laying flat, and he gets the gel, he opened  
17    it and he puts it on his 2 fingers, and he lifts my hands  
18    up like this with his hand, and he, like, massages my  
19    clitoris and said, like, how does that feel. And I just  
20    laid there. I didn't say anything. I didn't even know  
21    what to say at this point.

22    Q.    When he touched you on your vagina, was he wearing  
23    any gloves?

24    A.    No. He was not wearing any gloves.

25    Q.    Once again, why were you in the medical unit on that

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1 specific day?

2 A. For my back.

3 THE COURT: When was this?

4 THE WITNESS: It was sometime in I think around  
5 August, because it was --

6 THE COURT: Of 2005?

7 THE WITNESS: Yes, sir.

8 Q. Now, during the time that Gary was touching you  
9 inappropriately, you testified that it started in February  
10 of 2005 and continued to January of 2006, did you ever  
11 tell anyone at the jail what was going on?

12 A. Yes, I told my therapist, Carol Manderino.

13 Q. When did you first tell Carol Manderino?

14 A. June, around June.

15 Q. And --

16 THE COURT: I'm sorry, I didn't hear that.

17 THE WITNESS: June, sir. June.

18 THE COURT: In June of 2005?

19 THE WITNESS: June 2005.

20 Q. And what did you tell her?

21 A. I told her that I wanted to tell her something, but I  
22 didn't know how to tell her. So I said to her, Carol -- I  
23 was having a therapy session and I was, like, Carol,  
24 there's something I want to tell you. She said, what is  
25 it? I said I'm being touched inappropriately and I don't

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1     like it. She said, by who? I didn't want to tell her. I  
2     didn't say the name. I just said, forget it, forget it.  
3     I didn't know how to tell her that.

4                 So she kept on saying, it's okay. You can tell  
5     me. Tell me. And I was, like, no, forget it, forget it.  
6     So we went on to talk about other issues, you know, in my  
7     life and what's going on with me prior to my legal  
8     situation.

9     Q. Did there come a time when you told Carol Manderino  
10    who the person was?

11    A. The next visit.

12    Q. When you say the next visit, was that a week later?

13    A. About a week.

14    Q. Was that also in June of 2005?

15    A. Yes.

16    Q. Tell us about that conversation.

17    A. I said to Carol, I said, Carol -- we came in and we  
18    talked. We always, like, pray first. And we prayed and  
19    we talked and I said Carol, like, really fast, I just  
20    dropped it on her. I said, Carol, Gary Feinberg was the  
21    one that was touching me. And she just looked at me,  
22    like, are you serious? I said, yeah. I told her -- she  
23    says, when did this happen and how does he touch you? So  
24    I described like I described to you previously what was  
25    going on in medical and she was, like, I can't believe it.



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1 I just can't believe it.

2 So she said that she would contact her  
3 supervisor -- well, first she said -- she was, like, blown  
4 away. I don't even know how to report something like  
5 this. She said that she would contact the supervisor and  
6 she would tell the supervisor.

7 Q. Do you know if she contacted her supervisor?

8 A. Well, I believed that she said she would and so I  
9 believed that that's what she did.

10 Q. Did you ever at any point in your conversations with  
11 Carol tell her that the touching that Gary did was  
12 consensual?

13 A. Never. I wasn't there for that. I was there because  
14 I was in pain. My leg was hurting. When I go to use the  
15 bathroom I got a sharp pain around my anus. I was not  
16 there to consent to Gary touching me.

17 Q. Was Carol Manderino ever able to help you?

18 A. No.

19 MS. FLYNN: Objection.

20 THE COURT: Overruled.

21 A. Does that mean answer?

22 Q. Yes, you can answer.

23 A. No. Not that I know of.

24 Q. Did she suggest anything that you can do to get out  
25 of this situation where Gary was touching you

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1     inappropriately?

2     A.     Well --

3                 MS. FLYNN:  Objection.

4                 THE COURT:  Overruled.

5     A.     Actually after we -- supposedly she spoke to her  
6     supervisor and Gary was still being seen -- I was still  
7     being seen by Gary Feinberg, she -- I had a federal hold  
8     on my violation of probation so she said that, I can get  
9     you into a program and that would get you out of the  
10    facility and plus it will be good for you to get treatment  
11    anyway from the County.  But at the time I had a hold for  
12    probation violation so she wrote my judge.

13    Q.     And which judge did she write?

14    A.     Judge Spatt.

15    Q.     And how many letters did she write?

16    A.     I believe that it was two letters.

17    Q.     After you told Carol Manderino in June of 2005, did  
18    you report what Gary was doing to anyone else at the  
19    facility?

20    A.     Yes.  Internal security.

21    Q.     And do you know who specifically in internal security  
22    that you spoke to?

23    A.     Sergeant Lundquist and Officer Olivencia.

24    Q.     When did you meet with Sergeant Lundquist and Officer  
25    Olivencia?

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1 A. It would have to be, like, in August.

2 Q. When you say it would have to be in August, why does  
3 August 2005 stand out for you?

4 A. Because in August of 2005 is around the time that I  
5 was -- shortly after I was put in suicide watch.

6 Q. Okay. Let me stop you right there. Let me make  
7 myself more clear.

8 Prior to that meeting in August of 2005 with  
9 Lundquist, had you had any other contact with him before  
10 that?

11 A. Yes, I had.

12 Q. What was that?

13 A. I had seen Lundquist and Olivencia because they were  
14 trying to get me to cooperate with the law enforcement  
15 agencies against crime in the community, guns, drugs,  
16 fraud.

17 Q. And what law enforcement agencies are you talking  
18 about?

19 A. I spoke to Secret Service.

20 Q. And when did you speak to Secret Service about the  
21 guns and the drugs and the --

22 A. No. It wasn't guns. The Secret Service was about  
23 fraud.

24 Q. When did you speak to them?

25 A. I believe it was around that time. A little earlier.

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1 Q. Now, the meeting in August of 2005, who initiated  
2 that meeting? Was it you or was it Sergeant Lundquist?

3 A. No, it was Sergeant Lundquist.

4 Q. And tell us what was discussed in that meeting.

5 A. Well, they wanted an update, see if I had any more  
6 information, if I was going to be willing to do the  
7 cooperation. And I told them that I didn't have anything,  
8 and that I did -- what I did have was that -- what was  
9 happening with Gary Feinberg over in their medical  
10 department.

11 Q. What specifically did you tell Sergeant Lundquist  
12 with respect to Gary Feinberg?

13 A. I said, Sergeant Lundquist, Gary has been touching me  
14 inappropriately and, you know, I need your help. He was  
15 like, oh, come on, Rita, come on, Rita. I don't want to  
16 deal with that. I don't want to deal with that. And I  
17 would say to him, like, if you don't believe me you can  
18 put a camera. I said, every time I go up for an  
19 examination he does this. If you can just put a camera  
20 inside the examination room you can see it for yourself.  
21 You can see it for yourself. You can see it. You know,  
22 but he was, like, come on, Rita, I don't want to do it. I  
23 don't want to deal with. It's not something I want to  
24 deal with.

25 Q. When Sergeant Lundquist -- did Sergeant Lundquist

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1 express any concerns about putting the camera in the  
2 examination room?

3 A. Yes? He said, he also said if he put the camera it  
4 would be a violation of some type of privacy right.

5 Q. When you suggested putting a camera in the  
6 examination room, were you concerned about your privacy  
7 rights?

8 A. No. I figured if he put it in there then he could  
9 see what was going and he could stop it.

10 Q. At any time after you told Sergeant Lundquist Gary  
11 Feinberg was touching you inappropriately, did he take a  
12 report?

13 A. No.

14 Q. Did he ask you any specific questions about what Gary  
15 was doing?

16 A. No.

17 Q. What about Olivencia, did he take a report?

18 A. Officer Olivencia just sat there the whole time.

19 Q. Did he ask you anything, any questions about the  
20 incidents to see if you were telling the truth, Officer  
21 Olivencia?

22 MS. FLYNN: Objection.

23 THE COURT: Sustained.

24 Q. At any point during that meeting after you told  
25 Sergeant Lundquist and Officer Olivencia that Gary was

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1 touching you inappropriately, did Sergeant Lundquist pick  
2 up the phone and call anyone on your behalf that could  
3 help you with the Gary situation?

4 MS. FLYNN: Objection.

5 THE COURT: Sustained.

6 Q. What, if anything, about Sergeant Lundquist do after  
7 you told him about the Gary Feinberg situation?

8 MS. FLYNN: Objection.

9 THE COURT: If you know.

10 A. Nothing. He did nothing.

11 Q. And as you sit here today, are you aware of whether  
12 Sergeant Lundquist or Officer Olivencia did anything with  
13 respect to your claims that Gary Feinberg was touching you  
14 inappropriately?

15 A. Am I aware that they did nothing?

16 Q. Are you aware if they did anything as you sit here  
17 today?

18 A. They didn't do anything, because if they did, then he  
19 wouldn't be allowed to keep touching me for several months  
20 afterwards.

21 Q. After you told Carol Manderino, you told Sergeant  
22 Lundquist, Olivencia, did you tell anyone else?

23 A. I told Mrs. McCarrick.

24 Q. Officer McCarrick?

25 A. Officer McCarrick.

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1 Q. Officer McCarrick.

2 When did you tell Officer McCarrick?

3 A. It was around -- between the 18th and, like, the 22nd  
4 of August.

5 Q. Was that 2005?

6 A. 2005, right.

7 Q. Where were you when you told Officer McCarrick?

8 A. I was in the rehabilitation department at the  
9 Riverhead jail. We have, like, a group therapy and prayer  
10 group, Bible studies, women, I was in one of those groups.

11 Q. What was Officer McCarrick doing in that group?

12 A. She was the officer that oversees the programs.

13 Q. Describe the circumstances that led up to the  
14 conversation where you told -- strike that.

15 At some point during the conversation -- strike  
16 that.

17 At some point, did you -- during the session,  
18 did you ask Officer McCarrick to make a phone call?

19 A. Yes, I did.

20 MS. FLYNN: Objection.

21 THE COURT: Overruled.

22 Q. And what was her response?

23 A. She said sure, I can.

24 Q. And why did you want to make a phone call?

25 A. Because I was upset.

**Rickenbacker - Direct/Joseph**

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1 Q. Who did you call?

2 A. I called Christopher Dooley and I called him and I  
3 told him that -- he had been calling Sheriff's department  
4 for me trying to report to somebody in the front office.  
5 And I told him, you got to come up here. You got to do  
6 something because --

7 THE COURT: I'm sorry, who did you call?

8 THE WITNESS: Christopher Dooley.

9 THE COURT: Who is he?

10 THE WITNESS: He's my friend.

11 THE COURT: Pardon?

12 THE WITNESS: He's my friend.

13 THE COURT: Was he an inmate?

14 THE WITNESS: No. He was on the outside.

15 THE COURT: Pardon?

16 THE WITNESS: He was on the outside.

17 THE COURT: An outside person?

18 THE WITNESS: Yes, civilian.

19 THE COURT: He was not a correction officer?

20 THE WITNESS: No.

21 Q. So you mentioned earlier that you were upset when you  
22 were making the phone call?

23 A. Yeah, I was upset and I called Chris and I'm, like,  
24 Chris, nothing is happening. I'm, like, would you call  
25 again. He's, like, I've been calling. And then I asked



**Rickenbacker - Direct/Joseph**

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1 him could he come up, maybe if he showed up at the  
2 Sheriff's department to speak to someone it would -- you  
3 know, to report it. And I started to cry. It was time  
4 for me to hang up now because the program was over.

5 And when I started to cry, Ms. McCarrick said to  
6 me, Rickenbacker, have a seat on the back pew of the  
7 chapel, because we have services in the chapel, so while  
8 she dismissed the other inmates she wanted to speak with  
9 me. So she dismissed everybody and it was her and I in  
10 the chapel. She sat down next to me. She said, why are  
11 you crying? What's going on with you? And I told her  
12 about Gary and how he was touching me. And then she just  
13 looked at me and then she said to me, if I was you, I  
14 wouldn't tell anybody else that story.

15 Q. Did she say anything else after she said that?

16 A. No. She got up and she went to the phone. She told  
17 me to continue to sit there, she went to the phone and the  
18 next you know, a sergeant came in and they was talking  
19 about they're putting me on suicide watch. So at that  
20 point I was like --

21 Q. Let me stop you right there.

22 How long had you known of Officer McCarrick  
23 prior to this day when you told her about Gary Feinberg?

24 A. For a while. Known her for a while.

25 Q. And how long had she been supervising these sessions?

**Rickenbacker - Direct/Joseph**

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1 A. Well, they rotate. Everybody in the rehab department  
2 they get, it depends on who's working that day, they sit  
3 in to make sure everything is okay with the inmates, so  
4 run the program.

5 Q. Had she ever expressed to you any concerns about your  
6 mental state?

7 A. No. Never.

8 Q. Had she ever placed you on suicide watch before you  
9 told her about Gary Feinberg?

10 A. No.

11 Q. Had anyone else at Suffolk ever placed you on suicide  
12 watch prior to that?

13 A. No.

14 Q. So after you told Officer McCarrick what Gary did,  
15 and she comes back and says -- you're going to be on a  
16 suicide watch, how did you respond?

17 A. Why? Why?

18 Q. What did she say?

19 A. She says, because I'm placing you on -- she wouldn't  
20 give you a reason, they didn't me a reason. They're,  
21 like, that's where you're going. I said, why am I going  
22 to have to do that? She said, you're going to suicide  
23 watch. And she did the paperwork. They never gave me any  
24 reason why. It was, like, you're going and that's that.

25 Then I was saying, why do I have to go? And she

**Rickenbacker - Direct/Joseph**

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1 says to me, like, again, if I were, you know, you  
2 shouldn't be telling -- you shouldn't be telling the story  
3 or something like that, to that effect. I don't know.  
4 She was putting me in suicide watch.

5 Q. At some point during that conversation did you ask to  
6 speak to her supervisor?

7 A. The supervisor was there. He was saying -- he was  
8 signing off on the paperwork. And I was saying, why? He  
9 walked out, they don't allow to you do that. You can't  
10 have the right to speak to the supervisor. They're the  
11 final authority. Whoever you're dealing with at the time  
12 in the jail, they're the final authority on everything,  
13 like you can't --

14 Q. Please describe what happened to you when you were  
15 placed on suicide watch.

16 MS. FLYNN: Objection.

17 THE COURT: Sustained.

18 Q. After you had the conversation with Officer McCarrick  
19 and she said that she was going to place you on suicide  
20 watch, where were you physically taken?

21 A. I was taken to the women's clothing room and I was  
22 stripped of all of my clothing.

23 MS. FLYNN: Objection.

24 THE COURT: Yes. Sustained.

25 MS. JOSEPH: May I approach, your Honor?

**Rickenbacker - Direct/Joseph**

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1 THE COURT: Yes.

2 (Continued on next page.)

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**Rickenbacker - Direct/Joseph**

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1 (Whereupon, the following occurred at sidebar.)

2 MS. JOSEPH: Judge, may we know the basis of the  
3 objection.

4 THE COURT: Yes. We're not trying her case.  
5 We're trying the case of Rochelle Ramos. We're not  
6 interested in whether she was on a suicide watch. We  
7 heard that she's in, and her troubles there are not really  
8 relevant.

9 MS. JOSEPH: Your Honor, it is relevant to rebut  
10 their claim that she didn't do enough to report this to  
11 the people at the jail.

12 It is our position that she was very careful  
13 about who she reported to because she did not want to be  
14 retaliated against and we want her to explain to the jury  
15 what she went through after going into suicide watch,  
16 describe why she was so hesitant. It's very vital.

17 It's not for damages. It's going to show her  
18 state of mind and why she was extremely hesitant,  
19 extremely careful about who she reported it to.

20 And I anticipate during opposing counsel's  
21 cross-examination they are going to cross her extensively  
22 on why she didn't tell this person, why she didn't file  
23 this report, to show the jury just how scary the situation  
24 was for her and it's extremely important and relevant.

25 THE COURT: First of all, she did testify that

**Rickenbacker - Direct/Joseph**

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1 she did tell at least three people that I just heard. So  
2 who else was she supposed to tell?

3 MS. JOSEPH: Exactly. But there's still the  
4 cross on that. And the jury, in order to fully understand  
5 her state of mind, has to know how scary the situation is  
6 for her.

7 It's not going to damages. It goes specifically  
8 to rebut their claim that, you know, this was just a cake  
9 walk, you just walk out and tell anybody and there will be  
10 no reprimand.

11 THE COURT: Then I would permit you to lead her  
12 by saying the following question, when you were on suicide  
13 watch did this in any way affect your not telling anybody  
14 else about this.

15 MS. JOSEPH: Okay.

16 THE COURT: Then I'll permit that. And without  
17 going into details about what the suicide watch was.

18 MS. JOSEPH: Okay.

19 THE COURT: All right.

20 (Continued on next page.)

21

22

23

24

25

**Rickenbacker - Direct/Joseph**

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1 (Whereupon, the following occurred in open  
2 court.)

3 BY MS. JOSEPH:

4 Q. Ms. Rickenbacker, without going into the details of  
5 what happened to you on your suicide watch, did this have  
6 an impact on who you reached out to and told at the  
7 prison?

8 A. I was afraid at this point because I knew that I  
9 wasn't suicidal. I didn't have suicidal tendencies, and  
10 that I felt that it was retaliation for me saying that  
11 Gary touched me. And I trusted Ms. McCarrick, thinking  
12 she was going to help me and then she turned around and  
13 put me in a 23-hour segregation, like, for no reason,  
14 like, I didn't do anything wrong. And I couldn't  
15 understand that and I was afraid that -- I was afraid. I  
16 didn't know what to do at this point about that situation.  
17 I was embarrassed because I was paraded around the  
18 building with no clothes.

19 MS. FLYNN: Objection, your Honor.

20 THE COURT: Overruled.

21 Well, all right. You say that because you were  
22 put on this suicide watch that that made you fearful and  
23 it prevented you from telling anyone else about your  
24 experience?

25 THE WITNESS: Yes.

**Rickenbacker - Direct/Joseph**

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1 THE COURT: Who would you tell in addition to  
2 who you told already?

3 THE WITNESS: I don't know, but I probably would  
4 have tried even harder, maybe stop the warden in the  
5 hallway. I don't know. But at that point I knew that I  
6 couldn't talk about it anymore because I didn't know what  
7 would happen to me.

8 Q. So after you were placed on suicide watch, did there  
9 come a time when you attempted to tell anyone else while  
10 you were at Suffolk?

11 A. Yes.

12 Q. When was this?

13 A. Months later. Like in November, around.

14 Q. And where were you?

15 A. I was again in the chapel and we had, like, a prayer  
16 service with, like, a local church, they had a prison  
17 ministry, and I wrote a prayer and I put it in the prayer  
18 box for, like, God or somebody to help me. And then I  
19 wrote a letter to the missionary and I said to him,  
20 please, when you leave, could you just read this and not  
21 inside the facility.

22 Q. Lowrita, I just want to make sure the jury hears what  
23 you said.

24 THE COURT: I didn't hear what she said.

25 What happened in the chapel?



**Rickenbacker - Direct/Joseph**

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1 THE WITNESS: I wrote a prayer and I put it in  
2 the prayer box.

3 THE COURT: What did the prayer say?

4 THE WITNESS: I was asking God to help me. And  
5 then I wrote a letter, a small letter to the missionary,  
6 the church missionary that was there giving the service,  
7 and I said to her -- and I placed it in her hand and I  
8 said to her, please, could you just wait until you leave  
9 to read it, and she said, sure. She put it in her pocket.

10 THE COURT: What did the letter say?

11 MS. JOSEPH: Your Honor, may I approach the  
12 witness with what's been previously marked as Plaintiff's  
13 61 for identification purpose.

14 THE COURT: What number is it?

15 MS. JOSEPH: Plaintiff's 61.

16 THE COURT: 51.

17 MS. JOSEPH: 61.

18 THE COURT: There's already a 51 in evidence.

19 MS. JOSEPH: 61.

20 THE COURT: 61?

21 MS. JOSEPH: Yes.

22 THE COURT: Okay.

23 MS. JOSEPH: Let the record reflect I'm showing  
24 opposing counsel a copy of P-61.

25 (Document handed to the witness.)

**Rickenbacker - Voir Dire/Flynn**

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1 Q. Ms. Rickenbacker, I'm handing you a copy of  
2 Plaintiff's 61.

3 Do you recognize that?

4 A. Yes.

5 Q. What is it?

6 A. It's the note that I wrote the reverend and my name  
7 and inmate number and location is on it.

8 Q. And when did you write this note?

9 A. November of 2005.

10 Q. And what was your state of mind when you wrote this  
11 note?

12 MS. FLYNN: Objection, your Honor.

13 THE COURT: Sustained.

14 MS. JOSEPH: Your Honor, I offer P-61 into  
15 evidence.

16 THE COURT: Any objection?

17 MS. FLYNN: May I have a voir dire, your Honor?

18 THE COURT: Surely.

19

20 VOIR DIRE EXAMINATION

21 BY MS. FLYNN:

22 Q. Ms. Rickenbacker, there's no date on this note,  
23 correct?

24 A. Yes.

25 Q. And what kind of paper did you write it on?

**Rickenbacker - Voir Dire/Flynn**

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1 A. A small prayer slip.

2 Q. A small prayer slip?

3 A. Yeah, we have it in the department. They supply the  
4 papers, it's cut like this and you're supposed to write  
5 your prayer on it and put it on the box and the church  
6 will pray over it for you. And then I wrote a second one  
7 and I folded it up and I put it -- when the lady came, I  
8 grabbed her hand and I put it in her hand and I said to  
9 her, would you please read this when you leave and help  
10 me.

11 Q. It's addressed to a Reverend Davis, is that the  
12 minister that was there?

13 THE COURT: Addressed to who?

14 MS. FLYNN: Reverend Davis, D-A-V-I-S.

15 Q. Where did you keep in piece of paper?

16 A. What do you mean, where did I keep it?

17 MS. JOSEPH: Objection.

18 Q. Why do you have a copy of it? Where did you keep it?

19 A. I didn't keep it.

20 THE COURT: Overruled.

21 A. Ask my lawyer. She'll tell you why she got it from.

22 Q. I'm asking you.

23 A. I didn't keep this piece of paper.

24 Q. Do you know where your lawyers got it from?

25 A. I believe from Reverend Davis.

**Rickenbacker - Direct/Joseph**

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1 MS. FLYNN: I have no other questions.

2 I have no objection, your Honor.

3 THE COURT: Plaintiff's Exhibit 61 in evidence.

4 (Plaintiff's Exhibit 61 in evidence.)

5

6 EXAMINATION (Continued.)

7 BY MS. JOSEPH:

8 Q. Lowrita, could you please read the note to the jury?

9 A. Reverend Davis, could you please help me. I'm being  
10 sexually assaulted by the doctor here every day at  
11 Riverhead correctional facility. I --

12 THE COURT: Excuse me. Do you want to read the  
13 note slower and louder so we'll all be able to hear it?

14 THE WITNESS: Okay.

15 THE COURT: All right. Go ahead.

16 A. Reverend Davis, could you please help me. I'm being  
17 sexually assaulted by the doctor here at Riverhead  
18 correctional facility. I reported it to security and  
19 nothing has been done. Please report this to someone on  
20 the outside. Please.

21 Q. After you gave the reverend this letter, did the  
22 situation with respect to Gary Feinberg change?

23 MS. FLYNN: Objection.

24 THE COURT: Overruled.

25 A. No.

**Rickenbacker - Direct/Joseph**

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1 MS. JOSEPH: Your Honor, may I approach?

2 Approaching the witness with what's been --

3 THE COURT: You can approach anytime. You don't  
4 have to have my permission.

5 MS. JOSEPH: Sorry, your Honor, just being extra  
6 formal.

7 THE COURT: Lawyers ask that because in many  
8 courts they have to get permission to approach the  
9 witness. I never believed in that. When I tried cases as  
10 a lawyer, I didn't like asking permission every time I  
11 wanted to give the witness a note. Where did that come  
12 from? Must have come from England.

13 MS. JOSEPH: Approaching the witness with what's  
14 in evidence as Defense Exhibit Z and what's been marked as  
15 PD-61.

16 THE COURT: I'm sorry, I can't hear you. B for  
17 baker?

18 MS. JOSEPH: Z for zebra, already in evidence  
19 and PD-61 for identifying purposes. Showing it to  
20 opposing counsel.

21 THE COURT: I'm sorry, I didn't get the second  
22 exhibit.

23 MS. JOSEPH: PD-61.

24 THE COURT: That's a Plaintiff's Exhibit?

25 MS. JOSEPH: A joint exhibit.

**Rickenbacker - Direct/Joseph**

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1 Q. Ms. Rickenbacker, do you recognize this?

2 A. Yes.

3 THE COURT: What's this?

4 MS. JOSEPH: Sorry, your Honor, PD-61.

5 A. Yes, I do.

6 Q. What is it?

7 A. It's the door to the examination room.

8 Q. Where?

9 A. At the Riverhead jail.

10 Q. Is it an accurate representation of the door to the  
11 examination room at the Riverhead jail?

12 A. Yes, it is.

13 MS. JOSEPH: Your Honor --

14 THE COURT: Is this a photograph? Is it a  
15 photograph?

16 THE WITNESS: Is the door a photograph?

17 THE COURT: What is that, a drawing, a painting?

18 THE WITNESS: It's a photograph.

19 THE COURT: Photograph, okay.

20 MS. JOSEPH: Your Honor, I offer PD-61 into  
21 evidence.

22 THE COURT: Any objection?

23 MS. FLYNN: No objection.

24 THE COURT: Plaintiff's Exhibit PD, Peter dog,  
25 61 in evidence.

**Rickenbacker - Direct/Joseph**

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1 (Plaintiff Exhibit PD-61 in evidence.)

2 MS. JOSEPH: May the witness step down from the  
3 witness stand to better illustrate her testimony to the  
4 jury?

5 THE COURT: Yes.

6 Q. Ms. Rickenbacker, why don't you come over here, stand  
7 by here.

8 Now, I'm showing you what was previously marked  
9 as Defense Exhibit Z. It's already in evidence. If you  
10 recognize --

11 THE COURT: Defendant's Exhibit what?

12 MS. JOSEPH: Z. Z as in zebra.

13 THE COURT: Z as in zebra?

14 MS. JOSEPH: Yes, your Honor.

15 Q. Do you recognize this photograph?

16 A. Yes, I recognize the photograph.

17 Q. And what do you recognize it to be?

18 A. It's the picture of the medical. This is the nurse's  
19 station. And the hallway.

20 Q. Now, can you tell in this photograph where the  
21 inmates would stand before being medically examined?

22 A. You have to stand behind this sign, from the sign  
23 back.

24 THE COURT: You have to keep your voice up.

25 A. You have to stand behind this red sign, not in front.

**Rickenbacker - Direct/Joseph**

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1 You have to stand from the sign back.

2 Q. Okay. When you say the sign, is it the sign that  
3 says stand quietly, back to the wall?

4 A. Yes.

5 Q. Is this where the inmates would stand?

6 A. Yes.

7 Q. Okay. And are you able to tell from this photograph  
8 where the examination rooms are?

9 A. I believe this is -- back here, that's one there and  
10 then there's another one right here.

11 Q. Okay. Focusing your attention on this area right  
12 here, what appears to be --

13 A. Indent.

14 Q. -- an indent, what's in this area?

15 A. I believe it's a television up here and it is a chair  
16 where the officer sits.

17 MS. JOSEPH: Your Honor, I'd just like to mark a  
18 T and a V on this exhibit.

19 THE COURT: Sure. You have something that shows  
20 up?

21 Q. Now, you mentioned this is where the officer usually  
22 sits.

23 Did you ever see officers watching television  
24 while you were down here?

25 MS. FLYNN: Objection.



**Rickenbacker - Direct/Joseph**

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1 THE COURT: Sustained as to form.

2 Q. What, if anything, would you see correction officers  
3 doing with respect to the television when you were down in  
4 the examination unit?

5 A. Watching. They watched TV.

6 Q. I'm now going to show you what's in evidence as  
7 PD-61.

8 Is this an accurate representation of the  
9 medical -- the door to a medical examination room?

10 A. Yes, it is.

11 Q. Okay. Now, what's this right here that I'm pointing  
12 to, this white square area?

13 THE COURT: In the middle of the photograph?

14 Q. In the middle of the photograph.

15 MS. JOSEPH: Thank you, your Honor.

16 A. It's a window, but it's a screen that you can pull  
17 down from the other side.

18 Q. Now, when you were in the medical examination room  
19 with Gary Feinberg and he was examining you, was this  
20 screen up or down?

21 A. Down.

22 Q. And is this an accurate representation of what the  
23 door in the medical examination room looks like when it's  
24 closed with the screen down?

25 A. Yes.

**Rickenbacker - Direct/Joseph**

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1 Q. Nothing further. You can return to your seat. Thank  
2 you.

3 I now want to focus your attention on February  
4 7th of 2006.

5 Did there come a time when you were questioned  
6 about Gary Feinberg on that day?

7 A. I was just going for a minute -- could you say that  
8 again.

9 Q. That's okay. I'll start over.

10 THE COURT: You have to get closer to the  
11 microphone, Ms. Rickenbacker.

12 Q. I want to focus your attention on February 7th of  
13 2006.

14 Did there come a time that day when you were  
15 questioned about Gary Feinberg?

16 A. February 2006?

17 Q. February 7th of 2006.

18 A. Yes.

19 Q. And who questioned you?

20 A. Well, I spoke to two groups of people. I spoke to  
21 Internal Affairs.

22 THE COURT: Who?

23 A. Internal Affairs of the Sheriff's department and then  
24 CIB, which is criminal investigation bureau.

25 Q. How did you learn that day on February 7th that these

**Rickenbacker - Direct/Joseph**

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1 departments wanted to speak to you?

2 A. They just called me down from the floor, I was on the  
3 fifth floor female section and they call your name. They  
4 didn't say what you're going for, they just call your name  
5 and say go down to the lobby.

6 So I got on the elevator and went down to the  
7 lobby. It was a group of us lined up against the wall for  
8 the -- to go to speak to the investigator, I guess.

9 Q. Prior to you being called down that day, were you  
10 aware that any investigation was taking place against Gary  
11 Feinberg from IAB or CIB?

12 A. No.

13 Q. You mentioned there was a group of women lined up  
14 against the wall.

15 Did you speak to any of them?

16 A. Briefly, because you're really not supposed to be  
17 speaking or talking a lot.

18 Q. What, if anything, did you learn as a result of these  
19 conversations?

20 A. That they were inappropriately touched by Gary  
21 Feinberg also.

22 Q. Do you recall speaking to any woman specifically by  
23 name?

24 A. Yeah, Linda Kennedy.

25 Q. And what did you learn from her?

**Rickenbacker - Direct/Joseph**

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1 A. That she had came in on an arrest and she was getting  
2 an examination and that he touched her inappropriately.

3 MS. FLYNN: Objection.

4 THE COURT: Yes. Sustained.

5 Q. Well, as a result of speaking with Linda Kennedy,  
6 what was your emotional state after that conversation?

7 MS. FLYNN: Objection.

8 THE COURT: Sustained.

9 Q. Did you file a lawsuit against the city for what Gary  
10 Feinberg did to you?

11 A. Yes, I did.

12 Q. Is that lawsuit still pending?

13 A. Yes, it is.

14 Q. After you spoke with Internal Affairs, what happened  
15 to you at the jail?

16 A. I was placed in --

17 MS. FLYNN: Objection.

18 THE COURT: Overruled.

19 A. I was placed in a 23-hour segregation. I was  
20 mistreated. They didn't feed me regularly. They came  
21 by -- officers came by calling me a snitch bitch.

22 MS. FLYNN: Objection, your Honor. And move to  
23 strike.

24 THE COURT: Overruled.

25 A. Calling me snitch bitch, calling me sluts, whores,

**Rickenbacker - Direct/Joseph**

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1 convicts, and a whole host of other things. I was denied  
2 medical attention for my back, medication had stopped, and  
3 it was just terrible. Showers, I was denied showers.

4 Q. Lowrita, are you familiar with a grievance process?

5 A. Yes, I am.

6 Q. Back in 2005, did you ever file one against Gary  
7 Feinberg?

8 A. No, I did not.

9 Q. Why not?

10 A. I didn't, because the filing, something that was that  
11 confidential I was afraid of what could happen to me if I  
12 did, because the grievance process is not confidential.  
13 And when you file a grievance they usually take it to the  
14 person that you filed against and show it to them. And I  
15 was afraid to do that.

16 Q. Let's go through the people that you actually did  
17 tell about Gary Feinberg.

18 Why did you tell Carol Manderino?

19 A. Because she's my therapist and I thought that she  
20 could help me.

21 Q. Why did you tell Sergeant Lundquist and Officer  
22 Olivencia?

23 MS. FLYNN: Objection.

24 THE COURT: Overruled.

25 A. I told Olivencia and Lundquist because they were

**Rickenbacker - Direct/Joseph**

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1 internal security. And being that they were helping,  
2 like, crimes that was being committed in the community and  
3 they help with crimes that's being committed inside the  
4 facility, I thought that would be the perfect place to  
5 address this issue and then hopefully that by telling them  
6 they would investigate and find the facts to be true and  
7 do something about Gary touching me inappropriately.

8 Q. Why did you tell Officer McCarrick?

9 A. That was -- at the time I was in the midst of my  
10 emotions, I just got off the phone and she seemed very  
11 sincere about -- concerned about, you know, me, because  
12 she was, like, what's wrong, are you okay, and I really  
13 thought, you know, if I told her maybe that she would make  
14 a difference. Being I tried every other avenue and  
15 failed, I thought maybe this would be the person that  
16 would do something about it.

17 Q. And why did you tell the pastor?

18 A. Well, that was my last -- that was my -- that was my  
19 last chance. I didn't know who else. I was, like, I was  
20 just so -- I was praying and they was talking about the  
21 love of God and how, you know, and I just thought maybe,  
22 maybe if I could just tell her, maybe she could do  
23 something from the outside because people on the inside  
24 wasn't trying to help me at all.

25 MS. JOSEPH: Your Honor, approaching the witness

**Rickenbacker - Direct/Joseph**

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1 with what's already in evidence as Plaintiff's Exhibit 8.

2 (Document handed to the witness.)

3 Q. You testified earlier that after you told --

4 THE COURT: This is 8 for identification or in  
5 evidence?

6 MS. JOSEPH: In evidence, your Honor,  
7 Plaintiff's 8.

8 Q. You testified earlier that after you told Internal  
9 Affairs about Gary Feinberg, correction officers started  
10 calling you names, I won't get into what they said.

11 Do you recognize that document that I'm showing  
12 you?

13 A. Yes.

14 Q. What is it?

15 A. It's -- this is a security referral for  
16 administrative segregation.

17 Q. Were you placed under administrative segregation  
18 after you told Internal Affairs about Gary Feinberg?

19 A. Yes.

20 Q. Did you consent to being placed under administrative  
21 segregation?

22 A. No, I didn't want to be placed in administrative  
23 segregation because you were kept in the back and nobody  
24 comes back there, and no inmates -- you can't see anybody,  
25 so if something was to happen to you back there, what

**Rickenbacker - Direct/Joseph**

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1 could you do. That's the last place I would want to be  
2 placed in administrative segregation. I would rather be  
3 placed in population where there were other people around  
4 at all times.

5 Q. Take a look at that document. Had you consented --

6 A. No, I did not.

7 Q. I want to finish my question.

8 Had you consented to being placed on  
9 administrative segregation, would it be indicated on that  
10 document?

11 A. Yes, well, you have to sign. You have to sign that  
12 you seen it, that you were placing yourself in it.

13 Q. And is your signature on that document?

14 A. No.

15 Q. Okay. You can put it down.

16 I just want to jump and focus on January of 2006  
17 and February of 2007.

18 At any point during that timeframe, did you  
19 discuss the allegations regarding Gary Feinberg with  
20 Officer Lundquist?

21 THE COURT: With officer who?

22 MS. JOSEPH: Excuse me, Sergeant Lundquist.

23 A. Excuse me, January of 2006.

24 Q. Or February of 2006?

25 A. No, I did not.



**Rickenbacker - Direct/Joseph**

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1 Q. In January or February of 2006, did you discuss Gary  
2 Feinberg with police Officer Olivencia?

3 A. No, I did not.

4 Q. And what about Officer McCarrick, in January of 2006  
5 and February of 2006, did you discuss the allegations  
6 involving Gary Feinberg with her?

7 A. No, I did not.

8 Q. When you were placed on administrative segregation  
9 after you spoke with IAB, did you see any of the women  
10 that you saw in line that day when you went down before  
11 you were questioned by IAB?

12 MS. FLYNN: Objection.

13 THE COURT: Just yes or no.

14 A. Yes.

15 Q. And to your knowledge, were they receiving treatment  
16 similar to the way that you described being treated after  
17 you spoke with IAB?

18 MS. FLYNN: Objection.

19 THE COURT: Sustained.

20 Q. Ms. Rickenbacker, I want to go back to the first  
21 moment you recall Gary Feinberg crossing the line with you  
22 and touching you inappropriately.

23 Describe for the jury how you were feeling  
24 physically at that moment.

25 MS. FLYNN: Objection.

**Rickenbacker - Cross/Flynn**

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1 THE COURT: Sustained.

2 Q. You testified that you were going down to be examined  
3 because you were suffering from back pain?

4 A. Yes.

5 Q. Was your back hurting you at that moment?

6 A. Yes, it was.

7 Q. As you laid there in back pain, did you ever invite  
8 him at any point to start touching you inappropriately?

9 A. No. I was in pain. I wasn't there for him to do  
10 that. I was there for medical treatment.

11 MS. JOSEPH: Nothing further.

12 THE COURT: Cross-examination.

13

14 CROSS-EXAMINATION

15 BY MS. FLYNN:

16 Q. Good morning.

17 A. Good morning.

18 Q. You mentioned before when your counsel questioned you  
19 about your employment history, isn't it true that you've  
20 been incarcerated more than 30 times?

21 A. Yes, that's true.

22 Q. And --

23 THE COURT: Incarcerated what?

24 MS. FLYNN: Incarcerated more than 30 times.

25 Q. And isn't it true that you have also been arrested

**Rickenbacker - Cross/Flynn**

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1 more than 40 times?

2 A. Yes, it is true.

3 MS. JOSEPH: Objection.

4 THE COURT: Sustained. Strike out the answer.

5 The jury is instructed to disregard it.

6 Disregard any arrests.

7 Q. You testified that the first time that Gary Feinberg  
8 touched you was when you were incarcerated in February of  
9 2005; is that correct?

10 A. Yes, ma'am.

11 Q. And you indicated that it continued until sometime in  
12 January 2006; is that correct?

13 A. Yes, ma'am.

14 Q. But your incarceration in February of 2005 only  
15 lasted 30 days; isn't that right?

16 A. No, ma'am, it was 54 days and then I came back again  
17 in June.

18 Q. Okay. So you were released following your admission  
19 to the correctional facility -- in February when you say  
20 this first started, you were released from Suffolk County  
21 custody, correct?

22 A. I was, yes -- yes or no?

23 Q. Yes or no.

24 A. Yes.

25 Q. So you were out of Suffolk County custody for a

**Rickenbacker - Cross/Flynn**

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1 period of time following the incidents in February of 2005  
2 when you said Gary Feinberg assaulted you, correct?

3 A. No. I didn't understand that.

4 Q. You say that Gary Feinberg started touching you  
5 inappropriately in February of 2005 --

6 MS. JOSEPH: Objection.

7 Q. -- is that correct?

8 THE COURT: Overruled.

9 A. Yes.

10 Q. And then you say he start touching you  
11 inappropriately again in June of 2005; is that correct?

12 A. Yes.

13 Q. But in between those two incarcerations you were out  
14 of Suffolk County custody; isn't that correct?

15 A. Yes, ma'am.

16 Q. As a matter of fact, you were not in anybody's  
17 custody during that time?

18 A. No. I was not, ma'am.

19 Q. And during that time, did you go to the police and  
20 tell them that Gary Feinberg had sexually assaulted you  
21 while you were at the Suffolk County correctional  
22 facility?

23 A. No.

24 Q. Did you write any letters to anyone at the Suffolk  
25 County correctional facility when you were out of custody

**Rickenbacker - Cross/Flynn**

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1 complaining that Gary Feinberg had been sexually touching  
2 you?

3 A. No, ma'am. I self-medicated when I got out.

4 Q. So the answer is no?

5 A. Yeah.

6 Q. Did anyone on your behalf go to the police while you  
7 were out of custody and tell them that Gary Feinberg had  
8 been sexually assaulting you?

9 A. Did anybody on my behalf?

10 Q. On your behalf?

11 A. No. Not that I know of.

12 Q. Okay. Did anybody on your behalf contact the Suffolk  
13 County correctional facility while you were out of custody  
14 and tell them that you had been sexually assaulted by Gary  
15 Feinberg?

16 A. No.

17 Q. And can you give the jury an idea about how many  
18 times Gary Feinberg did this inappropriate touching?

19 A. A lot.

20 Q. What's a lot?

21 A. Once or twice a month.

22 Q. And that's from June of 2005 until January of 2006?

23 A. Yes.

24 Q. So we're talking more than ten times, more than?

25 A. If that's what you want to say.

**Rickenbacker - Cross/Flynn**

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1 Q. Okay. And what you're telling this jury is that this  
2 contact between you and Gary Feinberg happened every time  
3 you went down to medical?

4 A. Every time.

5 Q. Okay. Now, when you were told on any of those  
6 occasions that you were going to go down to medical, did  
7 you refuse to go down to medical?

8 A. I refused, but you can't refuse to go down to  
9 medical.

10 Q. When you say you refused, did you refuse on a tier to  
11 go down to medical?

12 A. You can't.

13 Q. Did you try to refuse?

14 A. You cannot.

15 Q. I'm asking you, when they told you you were going  
16 down to medical on the tier, did you say to anyone on the  
17 tier, I am not going down there, Gary Feinberg is sexually  
18 assaulting me?

19 A. No, ma'am.

20 Q. Yes or no?

21 A. No, I did not.

22 Q. Okay. And when you went down to medical, you  
23 indicated that while waiting to see Gary Feinberg, you  
24 wait up against the wall in the medical unit; is that  
25 correct?

**Rickenbacker - Cross/Flynn**

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1 A. Yes, ma'am.

2 Q. And it's fair to say that at that time -- withdrawn.

3 It's fair to say that while you're waiting there  
4 to see Gary Feinberg, there are corrections officers  
5 stationed in the medical unit; is that correct?

6 A. Yes, ma'am.

7 Q. And there are also other inmates waiting to be  
8 treated there, correct?

9 A. Yes, ma'am.

10 Q. And there is also medical staff in the sense of  
11 doctors and nurses in the medical unit?

12 A. Yes, ma'am.

13 Q. And in any of those occasions when you saw that you  
14 were going to be examined by Gary Feinberg, did you make  
15 an outcry and say, I am not going in there, he is sexually  
16 assaulting me?

17 A. Ma'am, that's not --

18 Q. Yes or no?

19 A. No, I did not. You can't do that in the correctional  
20 facility. You'll get a disciplinary for that.

21 Q. My question is, did you ever, when you saw that you  
22 were going into the examination room with Gary Feinberg,  
23 say to anyone, I am not going in there, he is sexually  
24 assaulting me?

25 A. No, but I did say to someone that I would like to see

**Rickenbacker - Cross/Flynn**

1003

1 another doctor.

2 Q. Okay.

3 A. I did. You know what they told me? Would you like  
4 to know?

5 Q. No, I don't, really. Thank you.

6 A. Okay.

7 Q. Now -- by the way, Gary Feinberg doesn't have a baton  
8 or a gun, correct?

9 A. No, ma'am.

10 Q. And there was a time, as a matter of fact, when Gary  
11 Feinberg was examining you where one day you just had  
12 enough and you got up and you walked out of that room; is  
13 that correct?

14 A. I jumped up and I said I've had enough.

15 Q. Okay. And that was on one occasion, you said, I've  
16 had enough, I'm leaving?

17 A. And he put his hand on my head and he said, you're  
18 having a bad day. He grabbed me by my waist and bumped me  
19 like this in my behind.

20 Q. Did you feel that was disrespectful when he did that  
21 to you?

22 A. Yes, that's when I called security.

23 Q. Okay. So it's fair to say that during this period of  
24 time there was one time that Gary Feinberg disrespected  
25 you; isn't that right?



**Rickenbacker - Cross/Flynn**

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1 A. Yes.

2 Q. That was because when you got up to leave the room,  
3 he grabbed you by your waist and he bumped into you and he  
4 said, what, are you having a bad day, Lowrita; is that  
5 right?

6 A. He said, oh, you're having a bad day.

7 Q. And you found that disrespectful, right?

8 A. I found it disrespectful that he grabbed my waistline  
9 and he bumped his penis into my behind.

10 Q. Okay.

11 A. That's what I found disrespectful.

12 Q. By the way, what you told this jury is that the first  
13 time that you went into that examination room and Gary  
14 Feinberg rubbed his fingers over your breasts, you didn't  
15 know that that was inappropriate; isn't that correct?

16 A. No, I didn't.

17 Q. Thank you.

18 A. I didn't know that it was inappropriate because the  
19 man -- the way the man reached --

20 Q. Ma'am, please, just answer my questions.

21 A. No, I didn't know.

22 Q. Okay. You said that you told Carol Manderino at that  
23 time, your therapist. She was your therapist, correct?

24 A. Yes.

25 Q. Okay. And you told her about what was going on with

**Rickenbacker - Cross/Flynn**

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1 Gary Feinberg; is that correct?

2 A. Yes, ma'am.

3 Q. But this is the same woman who wrote, and you  
4 testified to this, two letters to Judge Spatt on your  
5 behalf to try to help you; is that correct?

6 A. Yes, ma'am.

7 Q. All right. And you also testified that in August of  
8 2005 you met with the Secret Service; is that right?

9 A. Yes.

10 Q. And was that one occasion or two occasions?

11 A. I believe it was one.

12 Q. Okay. And how many Secret Service agents were there?

13 A. One or two. I couldn't tell because there was other  
14 people in the room besides Secret Service agents. They  
15 don't identify themselves. They just sit down. It could  
16 have been two Secret Service agents, someone from the  
17 Sheriff's department, because they don't identify like  
18 that.

19 Q. You met with someone from Secret Service --

20 A. That's what they said.

21 Q. Ma'am, please, let me finish my question and then you  
22 answer yes or no.

23 A. All right, ma'am.

24 Q. In August of 2005, while you were in custody at the  
25 Suffolk County correctional facility, you met with the

**Rickenbacker - Cross/Flynn**

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1 Secret Service, correct?

2 A. Yes, ma'am.

3 Q. And you sat with them and you spoke with them,  
4 correct?

5 A. Yes, I did.

6 Q. And you know the Secret Service are employed by the  
7 federal government; is that correct?

8 A. Justice department, ma'am.

9 Q. All right. And you never said a word to them about  
10 what Gary Feinberg was doing to you; isn't that correct?

11 A. Why would I?

12 Q. Ma'am, I asked you to answer me yes or no.

13 Did you say anything to the civil service --  
14 Secret Service --

15 A. No, they weren't there for that, ma'am. They were  
16 there for fraud.

17 Q. Ms. Rickenbacker, please answer my question yes or  
18 no?

19 A. No, I did not. Okay, I answered your question,  
20 ma'am.

21 Q. You didn't say anything to the Secret Service?

22 A. No, I didn't. I really didn't.

23 Q. When you were speaking about this Reverend Davis that  
24 you wrote the note to in November of 2005, Reverend Davis  
25 is not a county employee, correct?

**Rickenbacker - Cross/Flynn**

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1 A. No, she's not.

2 Q. Okay. And your testimony is that after you wrote  
3 to -- this note to Reverend Davis and gave it to her,  
4 that, as far as you know, she took no action on your  
5 behalf; is that correct?

6 A. That's as far as I know. I don't know what she did,  
7 ma'am.

8 Q. Please, ma'am, yes or no?

9 A. Yes.

10 THE COURT: Ms. Rickenbacker, on  
11 cross-examination you're going to be asked questions that  
12 are going to call for a yes or a no answer. So please try  
13 to answer yes or no. There may be some questions that you  
14 cannot answer yes or no. In that event, just say, I can't  
15 answer that question yes or no.

16 THE WITNESS: Okay.

17 THE COURT: And that, you leave it up to  
18 Ms. Flynn to change the question.

19 THE WITNESS: Okay. I can't answer that  
20 question.

21 THE COURT: But don't make explanations when the  
22 question doesn't call for it.

23 THE WITNESS: Okay.

24 THE COURT: That's our procedure on  
25 cross-examination.

**Rickenbacker - Cross/Flynn**

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1 THE WITNESS: Okay, Judge.

2 THE COURT: Okay?

3 THE WITNESS: All right.

4 THE COURT: All right.

5 THE WITNESS: I can't answer that question yes  
6 or no.

7 Q. Okay. Now, you spoke before about when Officer  
8 McCarrick put you on suicide watch in August of 2005, and  
9 you said that when she went to do that, you said something  
10 to her, you said, you challenged her. You said, why are  
11 you doing that? That's not fair; is that correct?

12 A. I said why.

13 Q. Okay. And you questioned what she was doing to you;  
14 is that correct?

15 A. Yes.

16 Q. And she's a corrections officer; is that correct?

17 A. Yes.

18 Q. All right. So you were willing to challenge a  
19 corrections officer who was putting you on suicide watch,  
20 but apparently you wouldn't stand up to Gary Feinberg, a  
21 physicians assistant in the medical unit; is that correct?

22 MS. JOSEPH: Objection.

23 A. I can't answer that.

24 THE COURT: Sustained.

25 Strike out the answer, if there was one. The

**Rickenbacker - Cross/Flynn**

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1 jury is instructed to disregard it.

2 Q. Are you aware of something called disciplinary  
3 segregation?

4 A. Yes, ma'am.

5 Q. All right.

6 And if a corrections officer puts you on  
7 disciplinary segregation, that's for a disciplinary  
8 infraction; is that correct?

9 A. Yes, it is.

10 MS. JOSEPH: Objection, your Honor.

11 THE COURT: Overruled.

12 Q. And in order to get off disciplinary segregation, you  
13 have to have a hearing with other corrections officers; is  
14 that correct?

15 A. Yes, ma'am.

16 Q. And with a suicide watch, you're aware that the  
17 person who ultimately decides whether you go onto suicide  
18 watch is someone in mental health; is that correct?

19 A. No, ma'am.

20 Q. The corrections officer refers you down to mental  
21 health when they put you on a suicide watch; isn't that  
22 correct?

23 A. Yes, ma'am.

24 Q. Okay.

25 But Officer McCarrick, who you say wanted to

**Rickenbacker - Cross/Flynn**

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1 punish you or keep you quiet about Gary Feinberg, didn't  
2 put you in disciplinary segregation, she put you on a  
3 suicide watch; is that correct?

4 A. I can't --

5 Q. Yes or no?

6 A. Did she put me --

7 Q. She put you on a suicide watch; is that correct?

8 A. Yes, she did.

9 Q. She didn't put you into disciplinary segregation,  
10 didn't she?

11 A. I thought you had to do something for that.

12 Q. I'm asking you if she put you --

13 A. No.

14 Q. Thank you.

15 Between June of 2005 and January of 2006, how  
16 many times did you go to church services with Reverend  
17 Davis?

18 A. I can't even answer that.

19 Q. All right. Well, was it more than five times?

20 A. I can't answer that.

21 Q. Was it more than once?

22 A. I can't answer that.

23 Q. Okay.

24 Was it more than ten times?

25 A. I can't answer that.

**Rickenbacker - Cross/Flynn**

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1 MS. JOSEPH: Objection, she said several times.

2 THE COURT: Counsel is asking questions probing  
3 whether she can get an answer. All right.

4 Q. You have no idea how many times you went to those  
5 church services?

6 A. Yeah, because the church services they're not the  
7 same people all the time, so I can't answer how many times  
8 that that lady has been there.

9 Q. Okay. I wasn't asking you that.

10 A. What was you asking?

11 MS. JOSEPH: Objection. That's a  
12 mischaracterization.

13 THE COURT: All right. Please don't argue with  
14 the witness.

15 MS. FLYNN: Yes, your Honor.

16 Q. From June of 2005 to January of 2006, how many times  
17 did you attend church services at the jail?

18 A. I attend every service I can possibly attend, every  
19 therapy group that I can possibly go to because I want to  
20 rehabilitate myself and stop going through the vicious  
21 cycle of coming to the Riverhead jail, ma'am.

22 Q. Other than writing that letter to Reverend Davis, did  
23 you complain to any of the other clergy that you saw while  
24 you were at the jail during that time, yes or no?

25 A. No.



**Rickenbacker - Cross/Flynn**

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1 Q. And when you were receiving this therapy in the jail,  
2 did you ever mention Gary Feinberg at any time during  
3 those therapy sessions, yes or no?

4 A. Yes.

5 Q. Who did you mention it to?

6 A. Carol Manderino.

7 Q. Okay.

8 Did you go to other therapy sessions in the  
9 rehab unit?

10 A. We don't get to speak like that there.

11 Q. I'm asking you, did you go to --

12 A. I go to a group with almost 200 women there. Did I  
13 mention about Gary Feinberg in front of 200 women?

14 Q. Yes.

15 A. No, I was embarrassed about the whole situation.

16 Q. Okay.

17 Now, your attorney asked you before why you  
18 didn't file a grievance about Gary Feinberg, and you said  
19 that you didn't do it because when you filed grievances,  
20 the grievance people would take it and confront the person  
21 with the grievance. In other words, they would confront  
22 Gary Feinberg, yes or no?

23 Is that what you testified to?

24 A. No, I didn't say that.

25 Q. Okay.

**Rickenbacker - Cross/Flynn**

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1 A. They wouldn't confront him with it.

2 They would show it to him and go, look what's on  
3 the side. It was a -- okay, look, there's written  
4 grievance against you, they would go like this, and show  
5 him the grievance. And that's in an unofficial capacity.

6 So being it's not on official capacity, you set  
7 yourself for people to do things to you like you'd never  
8 believe, like put you in disciplinary lock, stopping  
9 medication, not allowing you visits, a lot of different  
10 things also.

11 Q. But you did tell -- your testimony is you did tell  
12 Sergeant Lundquist and Investigator Olivencia; is that  
13 correct?

14 A. Yes, I did.

15 Q. By the way, after you were placed on suicide watch,  
16 the next day you saw Carol Manderino; is that correct?

17 A. Yes, I did, ma'am.

18 Q. And you told her that the reason that you had been  
19 upset the day before when you were placed on suicide watch  
20 was because you hadn't heard from your boyfriend and you  
21 were upset; isn't that correct?

22 A. No.

23 I guess she miswrote it. Christopher Dooley is  
24 not my boyfriend. He's my friend. And I finally  
25 contacted him --

**Rickenbacker - Cross/Flynn**

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1 Q. Ms. Rickenbacker, please answer my question.

2 A. No. That's not correct.

3 THE COURT: Just hold it a minute, please.

4 We're going to take a 15-minute recess.

5 Please don't discuss the case either among

6 yourselves or with anyone else. Keep an open mind.

7 Please recess yourselves.

8 (Whereupon, the jury retired from the

9 courtroom.)

10 (Recess taken at this point.)

11 (Continued on next page.)

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**Rickenbacker - Cross/Flynn**

1015

1 (Following a recess.)

2

3 THE CLERK: Jury entering.

4 (Jury enters the courtroom.)

5 THE COURT: Please be seated.

6 Sorry for keeping you waiting. We had a visit  
7 from a high school. We have students from schools come in  
8 and we talk to them about federal court, the jury system,  
9 and how wonderful it would be if they went to law school.  
10 So that's what I just did.

11 You may proceed.

12 MS. FLYNN: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MS. FLYNN:

15 Q. Ms. Rickenbacker, you mentioned before when your  
16 attorney was showing you pictures of the jail medical unit  
17 that sometimes the corrections officers would watch TV.

18 Do you remember indicating that?

19 A. Yes, ma'am.

20 Q. Are you aware the TVs were not put into the jail  
21 medical unit until 2008?

22 MS. JOSEPH: Objection.

23 THE COURT: Overruled.

24 A. I'm supposed to answer that question?

25 Q. Isn't it true that the TVs were not put in until

**Rickenbacker - Cross/Flynn**

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1 2008?

2 A. Not from my recollection, ma'am.

3 Q. And you indicated before that you have a lawsuit  
4 pending against the county, and your attorney is  
5 Mr. Norinsberg.

6 Is that correct?

7 A. Yes, ma'am.

8 Q. When I asked you before about the fact that you  
9 questioned Officer McCarrick about why she was putting you  
10 on suicide watch, my recollection is you said you don't  
11 confront corrections officers.

12 Is that correct?

13 A. No.

14 I never said that.

15 Q. Did you indicate that you don't challenge corrections  
16 officers?

17 A. I said why.

18 Q. When Officer McCarrick told you that she was putting  
19 you on suicide watch --

20 A. Yes, ma'am.

21 Q. -- you questioned why she was doing that.

22 Is that correct?

23 A. That's the question.

24 Yes, I did.

25 Q. You confronted her.

**Rickenbacker - Cross/Flynn**

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1 Is that correct?

2 A. I didn't think that was confronting her.

3 I just asked her why.

4 Q. In November of 2006, Ms. Rickenbacker, did you file a  
5 federal complaint on your own without a lawyer about your  
6 allegations against Gary Feinberg?

7 A. Yes, I did, ma'am.

8 MS. FLYNN: Defense Exhibit I, for  
9 identification.

10 THE COURT: I, for item?

11 MS. FLYNN: I, for item.

12 BY MS. FLYNN:

13 Q. I'd ask you to look at what's been marked as  
14 Defense Exhibit I, for item.

15 (Whereupon, there was a pause in the  
16 proceedings.)

17

18 BY MS. FLYNN:

19 Q. Do you recognize that document?

20 A. Yes, ma'am.

21 Q. And is that a document that you, yourself, wrote out?

22 A. No, ma'am.

23 Q. Who wrote that out?

24 A. It's a standard form they have at the jail.

25 Q. Okay.

**Rickenbacker - Cross/Flynn**

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1 But the information that's in there is  
2 information based on your knowledge.

3 Is that correct?

4 A. It's a standard form, and, yes, I --

5 Q. Okay.

6 There are pages of typewritten --

7 MS. FLYNN: Withdrawn.

8 BY MS. FLYNN:

9 Q. There are numerous pages that are typewritten in  
10 there.

11 Correct?

12 A. Yes.

13 Q. And that contains information about what you say your  
14 allegations are against the county and Gary Feinberg.

15 Is that correct?

16 A. Yes.

17 Q. And this was information -- did you type this out?

18 A. No.

19 Q. Who typed it out?

20 A. Clerk at the jail.

21 Q. And did they type it out based on information that  
22 you gave them?

23 A. Yes.

24 Q. I'd ask you to look at the second page of the  
25 complaint.

**Rickenbacker - Cross/Flynn**

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1 Do you see where it says paragraph four and then  
2 there's a subsection D on the bottom of the page?

3 Do you see that? You have to answer yes.

4 A. Yes.

5 Q. And do you see that it says there, on or about --

6 MS. JOSEPH: Objection, your Honor.

7 MS. FLYNN: I'm sorry.

8 I would move this into evidence, your Honor.

9 THE COURT: Any objection?

10 MS. JOSEPH: Objection, your Honor.

11 THE COURT: Can I see it.

12 Over here.

13 (Whereupon, there was a pause in the  
14 proceedings.)

15 MS. JOSEPH: Your Honor, may we approach?

16 THE COURT: All right.

17 Come up.

18 (Continued on next page.)

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**Rickenbacker - Cross/Flynn**

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1 (Sidebar.)

2 THE COURT: You are objecting to putting this in  
3 evidence?

4 MS. JOSEPH: I haven't seen it.

5 THE COURT: You haven't seen it?

6 MS. JOSEPH: No.

7 THE COURT: Okay.

8 MS. JOSEPH: Was this turned over in discovery?  
9 I'm just asking.

10 MS. FLYNN: I'll have to check the book.  
11 I'm not sure if it was.

12 MS. JOSEPH: Okay.

13 MS. FLYNN: I believe it was.  
14 I'll check.

15 MS. JOSEPH: Okay.

16 (Whereupon, there was a pause in the  
17 proceedings.)

18 MS. FLYNN: It's in my exhibit book as Exhibit  
19 X.

20 THE COURT: It's in your exhibit book as Exhibit  
21 X, for x-ray?

22 MS. FLYNN: Yes.

23 MS. JOSEPH: Your Honor, what's the purpose of  
24 this?

25 It's inadmissible hearsay.

**Rickenbacker - Cross/Flynn**

1021

1 THE COURT: Are you objecting to this?

2 MS. JOSEPH: Yes.

3 THE COURT: What's the relevance of this?

4 MS. FLYNN: Because this is -- first of all,  
5 it's a complaint filed with the court, and I would ask the  
6 court to take judicial notice of it.

7 And in there she says she didn't tell Carol  
8 Manderino she was being sexually abused until January of  
9 2006.

10 THE COURT: I'm certainly going to allow that  
11 part in.

12 MS. JOSEPH: So specifically what paragraph are  
13 you referring to?

14 MS. FLYNN: It's page two, 4 D.

15 MS. JOSEPH: Is there any other portion that you  
16 want to get in?

17 MS. FLYNN: I'm just going to ask her about  
18 that.

19 I ask that the whole thing go into evidence,  
20 though.

21 MS. JOSEPH: I'm sorry.

22 I didn't hear what you just said.

23 THE COURT: She says she wants to put that in,  
24 but she wants to put it in by putting the whole document  
25 in.

**Rickenbacker - Cross/Flynn**

1022

1 Do you object to that?

2 MS. JOSEPH: Yes, your Honor.

3 It looks like she's just using this to show  
4 inconsistency in the D part she referred to.

5 THE COURT: I'm going to allow only that part to  
6 go in.

7 If you object, there's a lot of things in there  
8 that help the plaintiff.

9 MS. JOSEPH: All right.

10 THE COURT: That's up to you.

11 MS. JOSEPH: Then the only portion that we would  
12 like to exclude is the allegation of loss of personal  
13 property and illegal detention.

14 MS. FLYNN: Your Honor, it's a complaint that's  
15 on file --

16 THE COURT: You want the whole thing in?  
17 Do you want the whole thing in?

18 MS. FLYNN: I want the whole thing in, yes.

19 THE COURT: I'll give you a choice, either the  
20 paragraph that's the inconsistency or the whole thing goes  
21 in?

22 MS. JOSEPH: Okay.

23 The whole thing.

24 THE COURT: The whole thing.

25 Okay.

**Rickenbacker - Cross/Flynn**

1023

1 MS. JOSEPH: You said it was X?

2 MS. FLYNN: It's X in my book.

3 MS. JOSEPH: Okay.

4 (Sidebar concluded.)

5 (Continued on next page.)

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**Rickenbacker - Cross/Flynn**

1024

1 (In open court.)

2 THE COURT: Defense Exhibit I, for item, in  
3 evidence.

4 (Whereupon, Defense Exhibit I was received in  
5 evidence, as of this date.)

6 BY MS. FLYNN:

7 Q. And, just to be clear, Ms. Rickenbacker, this is a  
8 complaint that you filed in federal court back in November  
9 of 2006.

10 Is that correct?

11 A. Yes.

12 Q. And I'd ask you to look at page two of your  
13 complaint, under Count One, paragraph 4 D.

14 A. Um-hmm.

15 Q. And in that paragraph you state that you told Carol  
16 Manderino you were being sexually assaulted by  
17 Gary Feinberg in January of 2006.

18 MS. JOSEPH: Objection, your Honor.

19 BY MS. FLYNN:

20 Q. Isn't that correct?

21 A. That's what it says here.

22 MS. JOSEPH: Objection, your Honor.

23 Counsel is misstating the paragraph.

24 THE COURT: I can't hear you.

25 MS. JOSEPH: Objection, your Honor.

**Rickenbacker - Cross/Flynn**

1025

1           The document is in evidence and counsel is using  
2   it. She can read directly from the document.

3           MS. FLYNN: Okay.

4   BY MS. FLYNN:

5   Q. I'm reading from page two, count one, paragraph 4 D.

6           On or about the month of January 2006, I  
7   revealed to the mental health therapist, Carol Manderino,  
8   that I was being sexually assaulted by the physician's  
9   assistant Gary Feinberg.

10           That is what that document says, correct?

11   A. Yes.

12   Q. Now, Ms. Rickenbacker, you are here today in court  
13   testifying because you want the jury to believe that  
14   starting in June 2005 you told Carol Manderino that you  
15   were being sexually assaulted by Gary Feinberg.

16           Correct?

17   A. Yes.

18   Q. And you are testifying here in court today because  
19   you want the jury to believe you when you say that you  
20   were asking Sergeant Lundquist and Investigator Olivencia  
21   and Investigator McCarrick for help with your problem with  
22   Gary Feinberg as early as August of 2005 and they did  
23   nothing.

24           Is that correct?

25   A. Yes, ma'am.

**Rickenbacker - Cross/Flynn**

1026

1 Q. Well, Ms. Rickenbacker, isn't it true that just this  
2 past August, August 6, 2009, you pled guilty to identity  
3 theft and forgery in the third degree.

4 Is that correct?

5 A. I pled guilty to a petit larceny, and criminal  
6 impersonation.

7 MS. FLYNN: Your Honor, I'd like to show the  
8 witness what's been marked as Defense Exhibit J for  
9 identification.

10 BY MS. FLYNN:

11 Q. I'm going to show you what's been marked as  
12 Defense Exhibit J for identification.

13 Does that refresh your memory?

14 A. I thought it was pet --

15 Q. Please let me finish my question.

16 A. Okay.

17 Q. Does that refresh your recollection as to whether on  
18 August 6, 2009, you pled guilty to identity theft in the  
19 third degree and forgery in the third degree.

20 Is that correct?

21 A. That's correct.

22 Q. Okay.

23 And those charges arose out of the fact that you  
24 went into a store --

25 MS. FLYNN: Withdrawn.

**Rickenbacker - Cross/Flynn**

1027

1 BY MS. FLYNN:

2 Q. And those charges, the identity theft charges, arose  
3 out of the fact that on December 20, 2007, you were found  
4 to have in your possession eight credit cards, five  
5 driver's licenses, and 31 checks in the names of other  
6 people.

7 Isn't that correct?

8 A. I don't remember.

9 Q. Isn't that correct that on December 20th, 2007, you  
10 went into the Babies R Us store.

11 THE COURT: The what?

12 MS. FLYNN: Babies R Us.

13 THE COURT: Babies R Us?

14 MS. FLYNN: Yes.

15 THE COURT: Okay.

16 BY MS. FLYNN:

17 Q. And you returned a stolen baby monitor and got a  
18 store credit using the false identity.

19 Isn't that true?

20 A. No. That's not true.

21 I returned the baby monitor using my cousin's  
22 ID.

23 Q. Okay.

24 A. That's what I did. It wasn't stolen.

25 The object wasn't stolen. It was that I used my



**Rickenbacker - Cross/Flynn**

1028

1 cousin's ID, because I didn't have a driver's license

2 ID --

3 Q. Okay.

4 A. -- to return it, and that made it a forgery because  
5 it was not me who actually doing the return.

6 That's what happened.

7 Q. Okay.

8 And then you went into the store and you  
9 presented the store clerk with a false ID.

10 Is that correct?

11 A. Yes.

12 Q. And you got a store credit issued to you under that  
13 false identification.

14 A. Yes, I did.

15 Q. Is that correct?

16 A. Yes.

17 Q. And it's also true that at that time you had eight  
18 credit cards and five driver's licenses and 31 checks in  
19 the names of other people.

20 Is that correct?

21 A. That was found in the car.

22 Yes.

23 Q. That was found in your car?

24 A. No.

25 Q. They were your items?

**Rickenbacker - Cross/Flynn**

1029

1 A. No.

2 It was found in the car that I was in with  
3 codefendant.

4 Q. You pled guilty to identity theft.

5 Correct?

6 A. I did.

7 I did the return --

8 Q. Ma'am, you pled guilty to identity theft.

9 A. Yes, I did.

10 Q. And these credit cards and driver's licenses you got  
11 in exchange for crack.

12 Isn't that true?

13 A. Oh, yes.

14 Yes.

15 Q. Okay.

16 A. Definitely, I was smoking crack.

17 Q. And you also pled guilty on August 6, 2009, to the  
18 crime of criminal impersonation in the second degree.

19 A. Yes, I did.

20 Q. Is that correct?

21 A. Yes.

22 Q. And that arose out of the fact that when you were  
23 stopped for a traffic violation, you gave the police a  
24 false identity.

25 Correct?

**Rickenbacker - Cross/Flynn**

1030

1 A. Yes.

2 I gave my sister's name.

3 Q. Okay. Thank you.

4 And you also pled guilty on March 2, 2000 to the  
5 charge of criminal possession of a forged instrument  
6 because in January, on January 27th, 2000, you used a  
7 forged check in a supermarket.

8 Is that correct?

9 A. 2000, that's too far back.

10 That's nine years ago, ma'am.

11 Q. You can't remember that you did that.

12 A. No, no.

13 Q. I have Defense Exhibit L for identification that I'd  
14 like to show you.

15 I'd ask you to look at that.

16 (Whereupon, there was a pause in the  
17 proceedings.)

18

19 BY MS. FLYNN:

20 Q. I ask you if that refreshes your recollection?

21 A. Yeah.

22 That's when I was on crack.

23 Q. Okay.

24 And you pled guilty on March 2nd, 2000, to  
25 passing a forged check.

**Rickenbacker - Cross/Flynn**

1031

1 Correct?

2 A. Yes, ma'am.

3 Q. And as recently as September 23, 2009, you pled  
4 guilty again to the crime of false impersonation.

5 Is that correct?

6 A. September 23rd, 2009?

7 Q. Yes.

8 A. That was an '07 case, yeah.

9 It was two years old.

10 Q. Okay.

11 And you pled guilty?

12 A. Yes, I did.

13 Q. And on that occasion it was once again you were  
14 stopped by the police and you gave your sister's name.

15 Correct?

16 A. Yes.

17 Q. And you did that because you knew you had a warrant  
18 out against you.

19 Is that correct?

20 A. No.

21 I didn't have a driver's license at the time.

22 Q. Oh, okay.

23 You didn't have a driver's license?

24 A. Yes.

25 Q. And you also pled guilty to false personation arising

**Rickenbacker - Cross/Flynn**

1032

1 out of an arrest on November 5th, 2008, because at that  
2 time, again, when you were pulled over you again  
3 identified yourself as your sister, Anita Rickenbacker.

4 Right?

5 A. Right.

6 Q. So you tried to use your own sister's name on several  
7 occasions to avoid getting arrested.

8 Is that correct?

9 A. Because I didn't have a driver's license -- yes.

10 Q. And you wanted to avoid getting arrested?

11 A. Yes, I did.

12 Q. From your experience at the jail, Ms. Rickenbacker,  
13 you are familiar with something called a writ?

14 A. Yes.

15 They have them in the law library.

16 Q. And a writ is something that an inmate can file if  
17 they have a complaint about something going on at the  
18 jail.

19 Is that correct?

20 A. No, you can't.

21 Q. You can file a writ, and you will be taken before a  
22 justice of the supreme court.

23 Is that correct?

24 A. Yes, ma'am.

25 Q. And the inmate can make that request, to be seen

**Rickenbacker - Cross/Flynn**

1033

1 before the judge.

2 Is that correct?

3 A. Yes.

4 Q. Isn't it true, Ms. Rickenbacker, that you appeared in  
5 writ court?

6 A. Yes.

7 Q. Before a judge of the supreme court named  
8 Arthur Pitts on July 20th, 2005.

9 Is that correct?

10 A. Yes.

11 Q. And you didn't say a word to him at that time, a  
12 justice of the supreme court of Suffolk County, about what  
13 was going on with Gary Feinberg.

14 Is that correct?

15 A. Yes, ma'am.

16 Q. And you also appeared before the Honorable Judge  
17 Baisley on July 13, 2005 in writ court.

18 A. Yes, ma'am.

19 Q. And you also didn't say a word to him, did you?

20 A. Didn't say a word.

21 Does it show the outcome of my writ? Because  
22 they told me --

23 MS. FLYNN: Your Honor, I move to strike.

24 THE COURT: Strike out the answer.

25 The last statement by the witness, the jury is

**Rickenbacker - Cross/Flynn**

1034

1 instructed to disregard it.

2 Listen to the questions, Ms. Rickenbacker. Just  
3 answer what you are asked.

4 THE WITNESS: Okay.

5 BY MS. FLYNN:

6 Q. And then on August 17th, 2005, you were again in  
7 front of Judge Pitts, and you again didn't say a word  
8 about Gary Feinberg.

9 Is that correct?

10 A. That's correct, ma'am.

11 Q. And, finally, on December 21st, 2005, you appeared  
12 before a Judge Jones and you never said a word to  
13 Judge Jones about the fact that you were being sexually  
14 abused by Gary Feinberg.

15 Is that correct?

16 A. Yes.

17 That's right, ma'am.

18 Q. Now, we had spoken before that Carol Manderino had  
19 written two letters for you to Judge Spatt.

20 A. Yes.

21 Q. And around the same time --

22 MS. FLYNN: Withdrawn.

23 BY MS. FLYNN:

24 Q. And that was approximately in August or September of  
25 2005?

**Rickenbacker - Cross/Flynn**

1035

1 A. Can you refresh my memory?

2 Do you have a copy of the letters?

3 Q. I'm just asking you.

4 A. I can't give you a date.

5 Q. Is it fair to say it was during 2005?

6 A. Yes.

7 Q. During the time you alleged you were being sexually  
8 assaulted by Gary Feinberg?

9 A. Yes.

10 Q. And, as a matter of fact, you, yourself, wrote  
11 letters to judges during that time.

12 Is that correct?

13 A. I wrote a letter to Judge Spatt I believe -- I don't  
14 know if it was that same time.

15 I think it was afterwards.

16 Q. Do you recall that you wrote a letter to Judge Spatt  
17 prior to January of 2006?

18 A. I wrote letters to Judge Spatt about -- when he  
19 sentenced me --

20 Q. Ms. Rickenbacker, I'm asking --

21 A. Yeah, I did.

22 But it was in 2002, something like that.

23 Q. Do you recall writing a letter to Judge Spatt during  
24 2005 when the situation with Gary Feinberg was going on?

25 A. It's a possibility, a possibility.



**Rickenbacker - Cross/Flynn**

1036

1 Q. And in that letter you didn't say anything to  
2 Judge Spatt about the fact that Gary Feinberg was sexually  
3 assaulting you, did you?

4 A. I probably wouldn't say anything to Judge Spatt.

5 Q. Do you recall if you did or you didn't?

6 A. I can't recall if I did or didn't because I can't  
7 see -- you have the letter?

8 Q. Sure.

9 A. But I probably wouldn't involve Judge Spatt.

10 MS. FLYNN: Defense Exhibit M, for Mary, for  
11 identification.

12 BY MS. FLYNN:

13 Q. Do you recognize that letter?

14 A. I recognize -- can I read it and I can say?

15 Because it's not signed. I know if I wrote it,  
16 I would usually sign it to Judge Spatt.

17 (Whereupon, there was a pause in the  
18 proceedings.)

19 A. Yeah, I think it was.

20 It was a plea for him to help me get a program.

21 Q. Okay.

22 And it's fair to say that letter was written  
23 sometime in 2005.

24 A. Would have to be, yes, because Carol Manderino's name  
25 is on it.

**Rickenbacker - Cross/Flynn**

1037

1 Q. Okay.

2 And in that letter, you do not mention anything  
3 to Judge Spatt about the fact that you claim you were  
4 being sexually abused by Gary Feinberg.

5 Correct?

6 A. No.

7 Q. During the same time you also wrote a letter to a  
8 state court judge, a Judge Filiberto.

9 Correct?

10 A. Can you refresh my memory, please?

11 Q. Ms. Rickenbacker, I'm going to show you two letters  
12 that have been marked Defense Exhibit N, for Nancy for  
13 identification, and O for orange for identification.

14 (Whereupon, there was a pause in the  
15 proceedings.)

16

17 A. They are pleading for rehabilitation.

18 Q. Ma'am --

19 A. I wrote those letters.

20 Q. Those are your letters?

21 A. Yes.

22 MS. FLYNN: I ask that they be put into  
23 evidence, your Honor.

24 THE COURT: Which one?

25 MS. FLYNN: N, O and M.

**Rickenbacker - Cross/Flynn**

1038

1 MS. JOSEPH: Objection.

2 THE COURT: Pardon?

3 MS. JOSEPH: Objection, your Honor.

4 THE COURT: Can I see them, please.

5 (Whereupon, there was a pause in the  
6 proceedings.)

7

8 THE COURT: I'm sustaining the objection to all  
9 three.

10 BY MS. FLYNN:

11 Q. Well, Ms. Rickenbacker, you wrote letters to  
12 Judge Spatt, and Judge Filiberto during 2005.

13 Is that correct?

14 A. Yes, ma'am.

15 Q. And in those letters, you didn't mention anything  
16 about the fact that you were being sexually assaulted by  
17 Gary Feinberg.

18 Correct?

19 A. No.

20 Q. You did not?

21 A. Wait, wait.

22 Q. In those letters, you did not mention that you were  
23 being sexually --

24 A. No.

25 Q. -- assaulted by Gary Feinberg.

**Rickenbacker - Cross/Flynn**

1039

1 Correct?

2 A. No, I didn't.

3 Q. You are also familiar with what's called internal  
4 affairs at the Suffolk County jail.

5 Is that correct?

6 A. It's part of the internal security I believe.

7 Q. Well, isn't it true that while you have been  
8 incarcerated at the Suffolk County Correctional Facility,  
9 you have written letters to internal affairs complaining  
10 about various things at the jail.

11 Is that correct?

12 A. I believe I wrote letters to -- I don't know if it's  
13 internal affairs, but internal security.

14 I don't think you can write to internal affairs.  
15 You give it to security and they would forward it from  
16 there, I believe. Olivencia and Lundquist or the sergeant  
17 on the floor.

18 I don't know about that.

19 Q. I'm going to show you what's been marked for  
20 identification as Defense Exhibit P, and ask you to take a  
21 look at that.

22 Is that your handwriting?

23 A. It's my handwriting, yes, ma'am.

24 Q. Is that a letter that you wrote?

25 A. This is a --

**Rickenbacker - Cross/Flynn**

1040

1 Q. I'm just asking you is that a letter that you wrote?

2 Yes or no?

3 A. Yes.

4 Q. And you are looking at -- is there a cc on that  
5 letter?

6 A. Yes, it is.

7 Q. And does it indicate it was cc'd to internal affairs?

8 A. Newsday, internal affairs --

9 Q. I'm sorry.

10 Does it indicate --

11 A. Warden --

12 Q. It indicates it was cc'd to internal affairs.

13 Yes?

14 A. Yes.

15 Q. And that's a letter you wrote?

16 A. Yes.

17 Q. And, as a matter of fact, you have written about  
18 three letters to internal affairs.

19 Is that correct?

20 A. If that's what you have in your folder, ma'am, that  
21 would be correct.

22 Q. That would be yes?

23 A. Yes.

24 If that's what you have, then that's what I  
25 wrote. That's my handwriting.

**Rickenbacker - Cross/Flynn**

1041

1 Q. So you were aware in 2005 that you can, in fact,  
2 write a letter to IA.

3 Is that correct?

4 A. Okay --

5 Q. Yes or no, please.

6 A. Yes.

7 Q. And you never wrote IA a letter about your  
8 allegations regarding Gary Feinberg.

9 Is that correct? Yes or no?

10 A. No, ma'am.

11 Q. And you are also familiar with something called a  
12 grievance procedure.

13 Is that correct?

14 A. Yes, ma'am.

15 Q. And you never filed a grievance regarding  
16 Gary Feinberg.

17 Isn't that correct?

18 A. You are right, ma'am.

19 Q. But you filed grievances about quite a few other  
20 things.

21 Isn't that correct?

22 A. Environmental grievances.

23 Yes, ma'am.

24 Q. And, as a matter of fact, in July of 2005, you filed  
25 a grievance against a corrections officer.

**Rickenbacker - Cross/Flynn**

1042

1                   Isn't that correct?

2     A.     And it was sent --

3     Q.     Please just say yes or no.

4     A.     Oh, yes.   Yes.   Yes.

5     Q.     Thank you.

6                   And at that time, you were accusing the  
7     corrections officer of calling you names.

8                   Is that correct?

9     A.     Yes, ma'am.

10    Q.     And you filed a grievance because of that.

11                   Correct?

12    A.     Yes, I did, ma'am.

13    Q.     And during August of 2005, you filed a grievance  
14    because you were complaining about insects in the jail.

15                   Is that correct?

16    A.     That's what the sergeant told me to do.

17                   Yes, ma'am.

18    Q.     And in August of 2005 you filed a grievance because  
19    the clanging of the gates inside the jail was interfering  
20    with your sleep.

21                   Isn't that correct?

22    A.     That's what the sergeant told me --

23    Q.     Please just say yes or no.

24    A.     Yes.

25    Q.     You also filed a grievance in August of 2005, August

**Rickenbacker - Cross/Flynn**

1043

1 5, 2005 with complaints about the plumbing.

2 Is that correct?

3 A. Yes, ma'am.

4 Q. And it's fair to say that you filed several other  
5 grievances in August of 2005.

6 Is that correct?

7 A. Yes, ma'am.

8 Q. In December of 2005, you filed a grievance about the  
9 telephone system at the jail.

10 Is that correct?

11 A. Yes, ma'am.

12 Q. During 2005 --

13 MS. FLYNN: Withdrawn.

14 Let me ask you something else.

15 BY MS. FLYNN:

16 Q. On January 9th, 2006, you also filed a medical  
17 grievance form saying that you hadn't been taken to  
18 medical.

19 Is that correct?

20 A. Let me see that.

21 Q. Yes.

22 I'm going to show you something that's been  
23 filed -- I'm sorry -- I'm going to show you something  
24 that's been marked for identification Defense Exhibit Q  
25 for identification and ask you to look at that and if you



**Rickenbacker - Cross/Flynn**

1044

1 recognize it.

2 A. Yeah, this is the nurse gave me a card with my  
3 medication --

4 Q. I'm sorry.

5 So this is a document that you filled out.

6 Correct?

7 A. Yes.

8 I'll explain to you, you want -- when I need the  
9 medication, and you can't see the doctor --

10 Q. Ms. Rickenbacker --

11 MS. FLYNN: I move to strike, your Honor.

12 THE COURT: Motion granted.

13 The jury is instructed to disregard it.

14 Ms. Rickenbacker, listen to the question. Just  
15 answer the questions you are asked.

16 THE WITNESS: Okay.

17 THE COURT: Please don't add anything.

18 If Ms. Joseph wants to ask you additional  
19 questions, she will have an opportunity to do it.

20 THE WITNESS: Okay.

21 THE COURT: Right now, on cross-examination, you  
22 have to answer responsively.

23 That's all.

24 THE WITNESS: All right.

25 A. So, what was the question?

**Rickenbacker - Cross/Flynn**

1045

1 Q. Did you fill out this document?

2 A. Yes.

3 MS. FLYNN: I ask that Defense Exhibit Q be  
4 moved into evidence.

5 THE COURT: Any objection?

6 MS. JOSEPH: Objection, your Honor.

7 THE COURT: Can I see it.

8 (Whereupon, there was a pause in the  
9 proceedings.)

10

11 THE COURT: Objection overruled.

12 Defense Exhibit Q, for queen, in evidence.

13 (Whereupon, Defense Exhibit Q was received in  
14 evidence, as of this date.)

15 BY MS. FLYNN:

16 Q. And this was a grievance that you filled to go down  
17 to the medical unit.

18 Correct?

19 A. Yes.

20 Q. And you filed that on January 9, 2006.

21 Is that correct?

22 A. Yes.

23 Q. And it doesn't say anything in there about the fact  
24 that Gary Feinberg was allegedly sexually assaulting you.

25 Does it?

**Rickenbacker - Cross/Flynn**

1046

1 A. No.

2 Q. And it doesn't say anything on this grievance, I  
3 don't want to see Gary Feinberg, does it?

4 A. No, it does not.

5 Q. Now, there were quite a few times from June of 2005  
6 through February of 2006 that you were not in custody at  
7 the Suffolk County Correctional Facility. You were in  
8 custody at the Nassau County Correctional Facility.

9 Is that correct?

10 A. Yes, ma'am.

11 Q. And during the time --

12 MS. FLYNN: Withdrawn.

13 BY MS. FLYNN:

14 Q. You were in custody in Nassau County at various times  
15 during the month of September of 2005.

16 Is that correct?

17 A. Yes, fall, yeah.

18 Q. And you were in Nassau County correctional custody  
19 during the month of October 2005?

20 A. Yes, ma'am.

21 Q. And, as a matter of fact, you were in the Nassau  
22 County Correctional Facility in December of 2005, weren't  
23 you?

24 A. If that's what the record states.

25 I can't keep dates like that.

**Rickenbacker - Cross/Flynn**

1047

1 Q. Do you recall a period of time in December of 2005  
2 where you were in custody at the Nassau County  
3 Correctional Facility?

4 A. It was, yeah, the end of the year.

5 Q. Thank you.

6 And while you were in custody during those times  
7 in Nassau County, you were seen by medical staff.

8 Correct?

9 A. I was seen by -- a phlebotomist.

10 That's it.

11 Q. And isn't it true that you never told anyone at the  
12 Nassau County Correctional Facility that you were being  
13 assaulted by Gary Feinberg.

14 Correct?

15 A. No.

16 Why would I do that?

17 MS. FLYNN: Move to strike.

18 THE COURT: Yes.

19 After the word no, the rest of the answer is  
20 stricken as not being responsive. The jury's instructed  
21 to disregard it.

22 BY MS. FLYNN:

23 Q. While you were in Nassau County custody, you were  
24 seen by a social worker.

25 Is that correct?

**Rickenbacker - Cross/Flynn**

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1 A. I believe it was in January or February, when I  
2 alternate housed.

3 I don't remember seeing a social worker previous  
4 to that.

5 Q. Do you remember in 2005 in Nassau County being seen  
6 by a psychiatrist?

7 A. No.

8 MS. JOSEPH: Objection.

9 A. I don't remember.

10 Q. When you --

11 MS. JOSEPH: Objection.

12 THE COURT: Pardon?

13 MS. JOSEPH: Objection, your Honor.

14 THE COURT: Overruled.

15 BY MS. FLYNN:

16 Q. But it's fair to say that on those three occasions  
17 when you were in Nassau County, out of Suffolk County  
18 custody, you never said anything to anyone there about the  
19 fact that you say you were being sexually assaulted by  
20 Gary Feinberg.

21 Is that correct?

22 A. No.

23 I didn't say anything.

24 Q. In December of 2005, when you allege that you were  
25 being sexually assaulted by Gary Feinberg, did you file a

**Rickenbacker - Cross/Flynn**

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1 federal lawsuit against the Danbury Federal Correctional  
2 Institute because of personal injuries that you said you  
3 sustained when you were in their custody?

4 Yes or no?

5 A. Yes.

6 Q. So during the time that you allege you were being  
7 sexually assaulted by Gary Feinberg, you were filing a  
8 federal lawsuit regarding your personal injuries.

9 Is that correct?

10 A. No.

11 Q. The lawsuit that you filed against --

12 A. Before that.

13 Q. I'm sorry.

14 The lawsuit that you filed against the Danbury  
15 Federal Correctional Institute, you filed that on December  
16 30, 2005.

17 Isn't that correct?

18 A. No.

19 Q. When did you file that lawsuit?

20 A. I -- originally the law library in Danbury filed that  
21 for me, I believe, in 2003, and they filed to the wrong  
22 district, the clerk there.

23 And then they -- I just sent the paperwork to  
24 the clerks here. They give you a pro se clerk, Sapienza,  
25 somebody like that, and they filed it here for me.

**Rickenbacker - Cross/Flynn**

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1 But the original suit was filed in 2003, I  
2 believe.

3 Q. So you are familiar with the procedure as to how to  
4 file a federal lawsuit.

5 Is that correct?

6 A. No.

7 Q. Well, Ms. Rickenbacker, I showed you before a  
8 document that was your pro se lawsuit against the county.  
9 And you filed that in federal court.

10 Correct?

11 A. Right.

12 Q. Okay. Thank you.

13 Now, Ms. Rickenbacker, on June 18, 2002, you  
14 pled guilty in this courthouse to a federal class C  
15 felony, credit count fraud.

16 Is that correct?

17 A. Credit card fraud, yes.

18 Q. And you pled guilty in this courthouse before  
19 Magistrate Justice Boyle.

20 Is that correct?

21 A. No.

22 Q. Do you remember ever appearing before Judge Boyle for  
23 your plea?

24 A. I pled guilty before Judge Spatt.

25 Q. Okay.

**Rickenbacker - Cross/Flynn**

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1 And you were represented by an attorney on those  
2 charges.

3 Is that correct?

4 A. Federal defender's office.

5 Q. And, by the way, when you were in the Suffolk County  
6 Correctional Facility from June 2005 until January of  
7 2006, you had various criminal charges pending against  
8 you.

9 Correct?

10 A. Yeah, I was in jail.

11 Q. And you had a lawyer during that time.

12 Correct?

13 A. What year was this? .

14 2005-2006?

15 Q. Yes.

16 A. Yes, uh --

17 Q. Okay. Thank you.

18 Now, the federal charges arose out of the fact  
19 that you used credit cards that were stolen from patients  
20 of the Veteran's Administration Hospital in Northport.

21 Correct?

22 A. Yes.

23 Q. And you used those credit cards to make purchases in  
24 the amount of approximately \$14,000.

25 Isn't that correct?



**Rickenbacker - Cross/Flynn**

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1 A. Yes.

2 Q. And those charges also arose out of the fact that you  
3 stole the identity of a woman who had employed you as a  
4 domestic, and you used her identity to purchase \$4,600  
5 worth of computer equipment.

6 Isn't that true?

7 A. Yes.

8 Q. And you also used one of those stolen credit cards to  
9 purchase three leather coats.

10 Isn't that true?

11 A. Yes.

12 Q. And you did that by using the stolen identification  
13 and ordering one coat over the phone from the company.

14 Correct? You called up the company and ordered  
15 a coat.

16 A. Yes.

17 Q. And when they sent you that coat, you called them  
18 back and you said it was the wrong size.

19 Correct?

20 A. Yes.

21 Q. And then they sent you another coat.

22 Correct?

23 A. Yes.

24 Q. And you called them back and said that you never  
25 received that second coat, and they sent you a third coat.

**Rickenbacker - Cross/Flynn**

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1 Is that correct?

2 A. I don't know about that one.

3 But that's what the document says?

4 Q. Do you recall that happening?

5 A. I don't recall them giving me three coats like that,  
6 but...

7 Q. Do you remember then selling one of those coats to  
8 your minister?

9 A. No.

10 Q. Now, as you mentioned, Judge Spatt was the judge  
11 handling your federal charges.

12 Correct?

13 A. Yes.

14 Q. And you appeared before Judge Spatt on October 7,  
15 2005 with your attorney.

16 Correct?

17 A. Yes.

18 Q. And that was in this courtroom.

19 Correct?

20 A. Yes.

21 Q. And there was nobody from Suffolk County Correctional  
22 Facility in this courtroom at that time.

23 Correct?

24 A. Yes.

25 Q. You were miles away from the Suffolk County

**Rickenbacker - Cross/Flynn**

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1 Correctional Facility.

2 Correct?

3 A. Yeah, I see where you are going with that.

4 Q. And you stood in this courtroom, before Judge Spatt,  
5 and you never said one word on October 7, 2005 about the  
6 fact that, as you claim now, you were being continuously  
7 sexually abused by Gary Feinberg.

8 Isn't that correct?

9 A. No.

10 I did not say anything to Judge Spatt.

11 Q. And you appeared before Judge Spatt again on December  
12 16, 2005.

13 Isn't that correct?

14 A. Yes.

15 Q. And on that day, you again appeared with your  
16 attorney.

17 Correct?

18 A. Yes.

19 Q. And, once again, there was nobody from the  
20 Suffolk County Correctional Facility in the courtroom.

21 Is that correct?

22 A. Yes.

23 Q. And you stood in front of Judge Spatt and you never  
24 said a word about the fact that Gary Feinberg, according  
25 to what you want this jury to believe now, was continually

**Rickenbacker - Redirect/Joseph**

1055

1 sexually abusing you against your will.

2 Is that correct?

3 A. Yes, he was.

4 Q. But you never said a word to Judge Spatt about that  
5 on December 16, 2005.

6 Isn't that correct?

7 A. No.

8 I never said anything to Judge Spatt.

9 Q. Thank you.

10 MS. FLYNN: I have no further questions.

11 THE COURT: Redirect?

12 MS. JOSEPH: Yes, your Honor.

13 REDIRECT EXAMINATION

14 BY MS. JOSEPH:

15 Q. Earlier in counsel's questioning, she asked you  
16 whether you made statements to Carol Manderino about  
17 Gary Feinberg.

18 Did you make a complaint to Carol Manderino, in  
19 addition to June to what you testified to earlier, did you  
20 make a complaint in November of 2005 regarding  
21 Gary Feinberg?

22 A. I spoke to Carol numerous times between June and --  
23 all the way up until almost the time I left the facility.

24 So to have any one date would be -- it's  
25 impossible. I can't remember. I spoke to her quite

**Rickenbacker - Redirect/Joseph**

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1 often.

2 She always asked follow up asking me what's  
3 going on? Am I still seeing him alone, or is he still  
4 having him as an assistant, I said yes.

5 So if you give me a date, I couldn't give you  
6 exact date, but Carol I spoke to many times all the way up  
7 until I got transferred to Nassau.

8 Q. And when you would ask Carol whether anything was  
9 going on, how, if any way, did she react to these  
10 questions?

11 MS. FLYNN: Objection.

12 THE COURT: Overruled.

13 A. When I asked -- she asked me how did she react?

14 Q. With respect to Gary Feinberg when you brought him  
15 up.

16 A. She was just very sad.

17 She was, like, oh, I told my supervisor. But  
18 she was afraid -- I think Carol was also afraid of  
19 conflict. She didn't want -- it was like -- they worked  
20 together.

21 And she figured she told the supervisor and he  
22 supposed to do what he supposed to do, but she was  
23 constantly asking me thinking maybe the supervisor did  
24 something.

25 So she would say is it all right now? You have

**Rickenbacker - Redirect/Joseph**

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1 the physician or is he seeing you with someone else in the  
2 room or did he stop or whatever, stuff like that, but  
3 nothing ever --

4 MS. FLYNN: Move to strike, your Honor.

5 THE COURT: Well, I'm leaving most of that  
6 answer in, except she's afraid of conflicts. That part of  
7 it is stricken.

8 The jury is instructed to disregard it.

9 BY MS. JOSEPH:

10 Q. Was there ever a time when you were speaking to Carol  
11 Manderino that you saw Gary Feinberg?

12 A. Yes.

13 MS. FLYNN: Objection.

14 THE COURT: Overruled.

15 BY MS. JOSEPH:

16 Q. When?

17 A. One time where I was in office with Carol, and her  
18 desk was, like, like this desk here, her door is like  
19 where the other -- where the other desk is. And I'm  
20 sitting on this side. And we are talking.

21 So I happen to look up, and Gary Feinberg --  
22 it's like a window. You see the window in the picture?  
23 Hers is the same door, but without a shade.

24 And he was standing like this in the window, and  
25 I said, Carol, he's standing looking in the window, and

**Rickenbacker - Redirect/Joseph**

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1 she was at her desk. She couldn't -- her head's this way.  
2 I'm sitting here where I could look through the window and  
3 she's saying, I'm not going to lift me head. Just tell me  
4 what he's doing. And I said, he's standing there like  
5 this with his arms folded.

6 That's the only time they -- Carol and I had  
7 interaction with Gary Feinberg at that jail.

8 Q. And what was going through your mind when Carol stood  
9 there with her head down?

10 MS. FLYNN: Objection.

11 A. I was nervous --

12 MS. FLYNN: Objection.

13 THE COURT: Sustained. Strike out the answer.

14 When you see counsel rise to her feet, she's  
15 going to make an objection, so please don't answer until I  
16 make a ruling.

17 THE WITNESS: Okay.

18 THE COURT: All right?

19 THE WITNESS: Okay.

20 BY MS. JOSEPH:

21 Q. Directing your attention to August of 2005, counsel  
22 asked you whether Christopher Dudley was your boyfriend at  
23 that time.

24 Did you continue to speak to Christopher Dudley  
25 after August of 2005?

**Rickenbacker - Redirect/Joseph**

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1 A. Yes.

2 Q. And what were you telling Christopher Dudley?

3 A. I was saying, Chris, did you call? Did you call and  
4 speak to somebody?

5 And he was saying, I'm trying. I'm trying.

6 That's when I decided to try another avenue.

7 Q. And turning your attention to January of 2006,  
8 focusing once again on Christopher Dudley, did you discuss  
9 whether he called the jail facility at that point?

10 A. Yes.

11 He said he had been calling from the very first  
12 moment I told him. He had got in touch with a few people,  
13 but nobody was actually giving him -- they wasn't taking a  
14 report. They wasn't saying anything.

15 Sometimes he would call and he would get, like,  
16 they would transfer him to a number and --

17 MS. FLYNN: Your Honor, I move to strike.

18 THE COURT: Pardon?

19 MS. FLYNN: I move to strike.

20 THE COURT: Motion granted.

21 Strike everything about what Christopher Dudley  
22 told the witness.

23 The jury's instructed to disregard it.

24 BY MS. JOSEPH:

25 Q. Without telling us anything Christopher Dudley said



**Rickenbacker - Redirect/Joseph**

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1 during your conversation in early 2006, what was your  
2 understanding of what Christopher Dudley was doing?

3 MS. FLYNN: Objection.

4 THE COURT: Overruled.

5 A. He was trying to make contact with someone at the  
6 jail to help me.

7 Q. Counsel asked you some questions about your period in  
8 2005 when you were incarcerated. You left for a brief  
9 time, and then you came back.

10 While you were out of jail during that brief  
11 time, she asked you whether you made a complaint against  
12 Gary Feinberg.

13 Could you tell the jury why you didn't.

14 A. When I got released from -- I got released from the  
15 jail, like, the same day I started smoking crack again.

16 And I was back on the street, and I didn't tell  
17 anybody. I just didn't think that it -- I don't know. I  
18 just didn't tell anybody. I just started getting high,  
19 immediately.

20 Q. Counsel also asked you pertaining to your description  
21 of how Gary Feinberg would fondle your breasts.

22 She asked you whether -- why you initially  
23 didn't think that was inappropriate.

24 A. Why I initially didn't think it was inappropriate?

25 Q. Yes, the way he was fondling your breasts initially

**Rickenbacker - Redirect/Joseph**

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1 in 2005.

2 A. Because I didn't think he would do it as a doctor.

3 Doctors, you know -- if your doctor touches you  
4 a certain way, you don't go, and go, oh, he's molesting me  
5 or he's touching me wrong.

6 I trust -- you would trust your physician. You  
7 know, the way he was doing it wasn't obviously like  
8 prodding it. He was, like -- you know what I'm saying? I  
9 don't know. I just didn't think at the time.

10 It wasn't until he kissed me and said that I was  
11 sexy that I truly knew. I didn't think that -- my whole  
12 life, I never had a doctor or professional person really  
13 do that without me knowing that's what they were going to  
14 do. You know what I'm saying?

15 I never had -- for me to think that would be  
16 ludicrous at the time. It wasn't until he told me that I  
17 was sexy and kissed me on my lips that I truly knew then  
18 it was a sexual advance.

19 Q. And defense counsel asked you a lot of questions  
20 about your long criminal history, in and out of jail.

21 During that time, were you examined by doctors  
22 inside the medical unit?

23 A. Through my history? Yes.

24 Yes?

25 MS. FLYNN: Objection.

**Rickenbacker - Redirect/Joseph**

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1 THE COURT: Overruled.

2 A. There was a wonderful doctor there named Judy. She  
3 was excellent.

4 And, yes --

5 Q. You were examined by doctors, correct?

6 A. Yes.

7 MS. FLYNN: Your Honor, I would ask counsel  
8 doesn't cut off her own client.

9 THE COURT: Pardon?

10 MS. FLYNN: I would ask that counsel doesn't cut  
11 off her own client.

12 She interrupted her own client in the middle of  
13 an answer.

14 THE COURT: I wasn't aware of that.

15 BY MS. JOSEPH:

16 Q. I'm sorry if I cut you off, Lowrita.

17 Was there something else you wanted to say?

18 A. No.

19 I'm done.

20 Q. During the time you were examined by all of these  
21 other doctors, did you ever claim that any of them had  
22 touched you inappropriately?

23 A. No.

24 Q. Counsel also questioned you specifically asked you  
25 whether Gary Feinberg had a baton or a gun.

**Rickenbacker - Redirect/Joseph**

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1 Do you recall that question?

2 A. Yes, I do.

3 Q. Did Gary Feinberg have the power to stop your  
4 medication?

5 A. Yes, he did.

6 Q. In fact, if you wanted medication at the jail, could  
7 you get medication without going down to the medical unit?

8 A. No, I couldn't.

9 Q. And during that time, how important was it for you to  
10 get your medication?

11 A. It was very important.

12 Q. Why?

13 A. I was having sciatic nerve problems.

14 I needed a muscle relaxer to be able to keep  
15 my -- the muscles from constricting, and causing me the  
16 pain, and without that, I couldn't even imagine, you know,  
17 it was just, like, so much pain.

18 It was just a constant pain, day and night. You  
19 can't sleep. You can't even -- when you go to the toilet,  
20 like you get, like, a sharp pain around your anus because  
21 it's like -- I don't know, it's a nerve, and I needed it.  
22 I needed my medication.

23 Without it I couldn't -- I couldn't imagine  
24 existing.

25 Q. Well, could you get a family member or a friend to

**Rickenbacker - Redirect/Joseph**

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1 bring the medication you need into the jail?

2 A. No.

3 It's against the jail's policy. You can't have  
4 any type of medication but from their medical department.

5 Q. And what medication were you on?

6 A. I was on Robaxin, which is a muscle relaxer, and I  
7 was on Naprosyn, which is a pain reliever and  
8 anti-inflammatory.

9 Q. Counsel also asked you whether when you went down to  
10 medical if you ever asked to see another physician.

11 What was your answer at that point during the  
12 examination?

13 A. You don't have a choice.

14 You can request it, but they assign who they  
15 want you to see, and that's that.

16 You don't have a choice of who you see.

17 Q. But at one point during the examination you said,  
18 yes, you actually did make the request to see a physician.

19 A. Yes, I did.

20 Q. Tell the jury what happened when you made the  
21 request.

22 A. They denied me my right to see someone else.

23 They said, no. This is who you are going to  
24 see. He's assigned to you.

25 This is the person you have to see.

**Rickenbacker - Redirect/Joseph**

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1 THE COURT: We are going to take a break. Lunch  
2 has arrived.

3 In the mean time, please don't discuss this case  
4 either among yourselves or with anyone else. Keep an open  
5 mind while you are having this delicious lunch.

6 Keep an open mind and don't talk about the case,  
7 either among yourselves or with anyone else. We will  
8 recess until 1:30 and have a nice lunch.

9 (Jury leaves the courtroom.)

10

11 THE COURT: 1:30.

12 You will have to return.

13 THE WITNESS: Okay, Judge Spatt.

14 (Luncheon recess.)

15 (Continued on next page.)

16

17

18

19

20

21

22

23

24

25

**Rickenbacker - Redirect/Joseph**

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1 A F T E R N O O N S E S S I O N

2 THE CLERK: Jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Please be seated, members of the  
5 jury.

6 You may proceed, Ms. Joseph.

7 BY MS. JOSEPH:

8 Q. Ms. Rickenbacker, I just have just a few more  
9 questions for you.

10 A. Okay.

11 Q. On cross-examination opposing counsel asked you  
12 several different times why you didn't make your complaint  
13 known to judges in open court.

14 Could you explain to the jury why you did not  
15 mention Gary Feinberg's allegation on those occasions?

16 A. Well, as I think back about it now that -- I believe  
17 I should have, but at the time that I did report it I  
18 thought that I was reporting it to the people that I  
19 needed to report it to, people that worked at the jail.  
20 At the time I had situations going on, that situation, and  
21 I didn't think like it would be appropriate for me to go  
22 into the judicial system and talk to a judge about it when  
23 they're not in the facility with me.

24 Now that I see that I could have, now that they  
25 raised the question, I should have, maybe I should have

**Rickenbacker - Redirect/Joseph**

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1 talked everywhere. But at the time -- it's a heavy  
2 burden. I was embarrassed. It's just, who wants to tell  
3 someone something so -- I didn't know what to do. I just  
4 did what I did and if it I could do something, if I could  
5 go back in time I would have told everybody I came in  
6 contact with.

7 I thought by telling internal security and the  
8 people like Carol Manderino, because she was my therapist  
9 and I relied on, you know, her judgment, and people inside  
10 the jail, that was the appropriate setting.

11 Maybe I should have wrote letters about that or,  
12 I don't know, but at the time I didn't, and you know, I  
13 don't know what else to say. I just didn't do it and  
14 maybe I should have.

15 Q. And defense counsel also asked you about the  
16 grievances you filed that summer. You filed grievances  
17 about insects, gates, plumbing, telephones, why didn't you  
18 file a grievance against Gary Feinberg?

19 A. Because like said before, the grievance system is not  
20 confidential, and also at the time it was supposed to be  
21 useful, like environmentally, the grievance system is for  
22 environmental situation, if something breaks, they say put  
23 in a grievance. Most of the grievances I put in I spoke  
24 to a sergeant, because they walk the floor I think twice a  
25 day and I complained to him about it, and he said well,



**Rickenbacker - Recross/Flynn**

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1 I'm going to send in an officer with a grievance, grieve  
2 it. That's what it was used for.

3 I didn't feel that reporting such an incident to  
4 the degree the incident was in, the grievance would be  
5 appropriate for that. Because it's not for contact. It's  
6 not confidential. It's primarily it goes like to a  
7 regular officer, and if I report it to internal security  
8 who is supposed to be like, they say that internal  
9 security is supposed to put good running and safety and  
10 order in the facility -- they say it's for the good  
11 running order and safety that's what they told me of the  
12 facility, this is who I reported it to.

13 I don't know. I just, I don't know, I see now I  
14 made a mistake. I should have explained every arena that  
15 I was in, but I didn't think it would be appropriate.

16 MS. JOSEPH: Nothing further.

17 THE COURT: Anything else?

18 MS. FLYNN: Yes, your Honor.

19

20 RECROSS-EXAMINATION

21 BY MS. FLYNN:

22 Q. Ms. Rickenbacker, you said that when Gary Feinberg,  
23 during the course of his examination, rubbed his fingers  
24 on your breasts, that you didn't realize that that wasn't  
25 part of regular medical examination. Is that what you

**Rickenbacker - Recross/Flynn**

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1 said?

2 A. Yes, I did.

3 Q. Did you think that it was part of the normal medical  
4 examination to get up on all fours on the examination  
5 table?

6 A. Yes, they do that.

7 My other doctor did that, too.

8 Q. Okay. I'm going to show you what's been marked as  
9 Defendant's Exhibit S for identification and T for  
10 identification. The attorney asked you about grievances  
11 and you indicated that grievance were only filed in your  
12 opinion because of conditions at the jail. Is that what  
13 you just said?

14 A. Yeah, environmental situations.

15 Q. I'm going to ask you to look at what's been marked  
16 for identification as Defendant's Exhibit S.

17 THE COURT: S as in sugar.

18 MS. FLYNN: S as in sugar, Judge.

19 Q. And do you recognize that document? (Handing.)

20 A. That's an environmental situation, yes.

21 Q. And is that a grievance that you filled with the  
22 Suffolk County sheriff's office?

23 A. Yes.

24 MS. FLYNN: I'd ask that it be moved into  
25 evidence Defendant's Exhibit S.

**Rickenbacker - Recross/Flynn**

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1 THE COURT: Any objection?

2 MS. JOSEPH: No objection.

3 THE COURT: Defendant's Exhibit S for sugar in  
4 evidence.

5 (Defendant's Exhibit S in evidence.)

6 MS. FLYNN: Thank you.

7 Q. And this is dated June 20, 2005?

8 A. Um-hmm.

9 Q. And this, by the way, is an informal grievance; is  
10 that correct?

11 A. All the grievances start out informally.

12 Q. Can you read what it says there?

13 A. On June 25th and 26th on 7 to 3 shift officer  
14 violated -- officer violated, minimum standards by  
15 refusing, by 7005 --

16 THE COURT: Excuse me. You have to get closer  
17 to the microphone and speak up.

18 A. Officer violated the minimum standards, 7005.2.

19 Refusing to allow shower and never cycling the gates.

20 When asking about the shower or opening the cell, he said  
21 get the fuck away from here from the sallie port. As a  
22 tier representative, I asked for cleaning supplies and he  
23 refused and he violated 700.511. He refers to us as  
24 bitches and assholes.

25 Q. And I'm going to show what's been marked as

**Rickenbacker - Recross/Flynn**

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1 Defendant's Exhibit T for Thomas for identification. And  
2 it's two pages.

3 A. On June 25 --

4 Q. Wait a minute.

5 Do you recognize that document?

6 A. Yes.

7 Q. And that document is in your handwriting?

8 A. Yes.

9 Q. And that's a formal grievance form?

10 A. Yes.

11 MS. FLYNN: And I'd ask that that be marked into  
12 evidence.

13 THE COURT: Any objection?

14 MS. JOSEPH: No objection.

15 THE COURT: Defendant's Exhibit T for tiger in  
16 evidence.

17 (Defendant Exhibit T in evidence.)

18 Q. In this formal grievance form you refer to behavior  
19 by a corrections officer. Correct?

20 A. Yes.

21 Q. And you say that he's abusing you by referring to you  
22 as a bitch and an asshole on numerous occasions, correct?

23 A. Yes.

24 Q. And you're talking about the fact that when you tried  
25 to go clean the housing area, he told you if you come to

**Rickenbacker - Recross/Flynn**

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1 the fucking gate one more time I'm locking you the fuck  
2 in.

3 Correct?

4 A. Yes.

5 Q. And in addition, you claim that he's not giving you  
6 cleaning supplies.

7 Correct?

8 A. Yes.

9 Q. And you asked -- withdrawn.

10 Where it says for the section here, actions  
11 requested by the grievant, can you read what it says  
12 there?

13 A. I asked for disciplinary action requested, this  
14 behavior embarks upon an Eighth Amendment violation,  
15 inmates were put in jail as a punishment not to be  
16 punished.

17 Q. So in this grievance what you were asking for was the  
18 disciplinary action be taken against the officer that you  
19 said used foul language against you.

20 Correct?

21 A. Yes, I did, it was not.

22 Q. Thank you.

23 You were mentioning, when your attorney was  
24 asking questions, the reason why you never said anything  
25 to any judge that you ever appeared in front of about your

**Rickenbacker - Redirect/Joseph**

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1 allegations of sexual abuse against Gary Feinberg, and you  
2 said it was because you thought that you had complained to  
3 the right people at the correctional facility.

4 Correct?

5 A. Yes.

6 Q. You started complaining at the correctional facility  
7 according to you sometime in June of 2005; is that  
8 correct?

9 A. Yes.

10 Q. By the time you appeared in front of Judge Spatt in  
11 October, four months had gone by; is that correct?

12 A. Yes.

13 MS. FLYNN: Thank you.

14 MS. JOSEPH: Just brief, briefly.

15

16 REDIRECT EXAMINATION

17 BY MS. JOSEPH:

18 Q. These grievances that you filed that counsel referred  
19 to, was anything done to the corrections officers?

20 A. Nothing.

21 MS. FLYNN: Objection.

22 THE COURT: Sustained.

23 Strike out the answer. The jury is instructed  
24 to disregard it.

25 Q. Counsel asked you to read the recommendations made

**Rickenbacker - Redirect/Joseph**

1074

1 regarding the correction officers. To your knowledge,  
2 were your recommendations followed?

3 MS. FLYNN: Objection.

4 THE COURT: I couldn't hear the question.

5 Q. Counsel asked you to read the section of the  
6 grievance where you made recommendations as to what you  
7 thought should be done to the correction officer.

8 To your knowledge, were these recommendations  
9 filed?

10 MS. FLYNN: Objection.

11 THE COURT: Sustained.

12 MS. JOSEPH: Nothing further.

13 THE COURT: You may step down. Please call your  
14 next witness.

15 MS. JOSEPH: Plaintiff calls Pastor Susan Davis.

16 MS. FLYNN: May we have a sidebar, your Honor?

17 THE COURT: Yes.

18 (Continued on next page.)  
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**Rickenbacker - Redirect/Joseph**

1075

1 (Whereupon, the following occurred at sidebar.)

2 MS. FLYNN: Your Honor, they're calling the  
3 reverend that Ms. Rickenbacker said she gave the note to  
4 about the alleged sexual abuse. That's complete  
5 bolstering, it's a collateral issue.

6 We're not here to have the jury decide as you  
7 said the other day a trial within a trial of whether or  
8 not Ms. Rickenbacker actually told this person, and this  
9 person is not listed on PTL. I had no idea that they were  
10 going to be calling her.

11 In fact plaintiff's counsel never mentioned to  
12 me they were calling her.

13 MS. JOSEPH: I was planning on calling two  
14 witnesses on this issue, Pastor Davis and Pastor Kurtin.  
15 Specifically, your Honor -- actually can we do this  
16 outside the hearing of the jury.

17 THE COURT: This is outside the jury.

18 MS. JOSEPH: I mean can we do this outside the  
19 presence of the jury out of the jury box. I want to refer  
20 to the portion that Lowrita gives notice that she informed  
21 her pastor about this incident.

22 Counsel did know about this. But the point is,  
23 as far as their claim of bolstering --

24 THE COURT: Who is refuting the fact that she  
25 gave notice to her pastor? Who is refuting that?



**Rickenbacker - Redirect/Joseph**

1076

1 MS. JOSEPH: Your Honor, Lowrita's credibility  
2 is definitely an issue. However, in addition to getting  
3 the note, Pastor Davis will testify that she gave that  
4 information over to her supervising pastor who I've also  
5 called to testify back in November. And then he called  
6 Suffolk and let them know about this incident.

7 THE COURT: The supervising pastor?

8 MS. JOSEPH: Yes.

9 THE COURT: Is he here?

10 MS. JOSEPH: Yes, he is.

11 THE COURT: That I will allow you to bring in,  
12 the supervising pastor who said he called somebody. Who  
13 did he call?

14 MS. JOSEPH: He called the assistant to sheriff  
15 DiMarco.

16 THE COURT: That I'll definitely allow.

17 MS. FLYNN: Is that on PTL? I never heard  
18 anything about this witness.

19 MS. JOSEPH: Your Honor, Lowrita Rickenbacker  
20 specifically testified at her deposition, she specifically  
21 talked about the note and that she gave it to a pastor,  
22 she mentioned the name of the church, she even provided  
23 the address. If the defense counsel wanted to, they could  
24 have investigated.

25 THE COURT: Excuse me, why didn't you put the

**Rickenbacker - Redirect/Joseph**

1077

1 name on the list of witnesses.

2 MS. JOSEPH: I just found out about this talking  
3 to Lowrita preparing for trial.

4 MS. ZWILLING: Excuse me, you were on as much  
5 notice as we were.

6 THE COURT: Excuse me, one lawyer at a time.  
7 Overruled, I'm not going to allow Pastor Davis. That's  
8 repetitive and unnecessary, you never gave notice.

9 I will allow the other pastor, you say is going  
10 to testify that he called after getting notice about  
11 Ms. Rickenbacker, called Suffolk County deputy sheriff or  
12 something.

13 MS. JOSEPH: Right.

14 THE COURT: I'll allow it.

15 MS. FLYNN: May ask when it was.

16 MS. JOSEPH: It was November of 2005. Pastor  
17 Davis will testify to that. But the key, your Honor,  
18 Pastor Davis is the link in all of this because she  
19 receives the note. She was at the facility and she's able  
20 to testify specifically which day in the facility that she  
21 was there, and she's able to testify that she told her  
22 supervising pastor the very next day. So she's like the  
23 link in all of this.

24 THE COURT: Okay. I'm going to allow you to put  
25 her on just for that purpose, that's all.

**Rickenbacker - Redirect/Joseph**

1078

1 MS. JOSEPH: Okay.

2 THE COURT: Overruled.

3 MS. FLYNN: I'm sorry, your Honor, may we  
4 approach again?

5 THE COURT: All right.

6 (Whereupon, the following occurred at sidebar.)

7 MS. FLYNN: This witness was in the courtroom  
8 during Lowrita Rickenbacker's testimony, your Honor.

9 I ask that she be prohibited from testifying on  
10 that ground. I didn't know who she was and she was  
11 sitting in the back when Ms. Rickenbacker was testifying  
12 and so was the other gentleman if that's the other  
13 gentleman.

14 THE COURT: I didn't see that.

15 MS. ZWILLING: They were here.

16 MS. FLYNN: They were both here.

17 THE COURT: I'm not going to preclude her, but  
18 you can bring out that she was sitting in the court and  
19 nobody brought it to my attention.

20 MS. FLYNN: I didn't know who she was.

21 THE COURT: You have to look and see who's in  
22 the courtroom. You can bring that out on  
23 cross-examination.

24 It's a limited purpose.

25 I don't want to hear anything else other than

**Rickenbacker - Redirect/Joseph**

1079

1 she received information from Ms. Rickenbacker and that  
2 she submitted this information to the other, who you say  
3 she did, that's it.

4 MS. JOSEPH: Okay.

5 Your Honor, may we approach again for  
6 clarification.

7 THE COURT: Okay.

8 MS. JOSEPH: This pastor received the original  
9 note. What we put in evidence is the copy. I just want  
10 to put the original note in.

11 THE COURT: Okay.

12 (Continued on next page.)  
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**Davis - Direct/Joseph**

1080

1 (Whereupon, the following occurred in open  
2 court.)

3 THE COURT: Have a seat, Ms. Joseph. Please  
4 rise. Raise your right hand.

5

6 **SUSAN DAVIS,**

7 called as a witness, having first  
8 duly affirmed, was examined and testified  
9 as follows:

10 THE WITNESS: Your Honor, I affirm the truth.

11 THE COURT: You can affirm that and you so  
12 affirm.

13 THE WITNESS: I so affirm.

14 THE COURT: Okay. Have a seat. Please state  
15 your full name and spell your last name slowly for the  
16 record.

17 THE WITNESS: My name is Susan Davis, D-A-V-I-S.

18 THE COURT: You may proceed.

19

20 **DIRECT EXAMINATION**

21 **BY MS. JOSEPH:**

22 Q. Ms. Davis, what is your official title?

23 A. My official title is Pastor Susan Davis.

24 Q. And how long have you been a pastor?

25 A. 15 years.

**Davis - Direct/Joseph**

1081

1 Q. Where did you study briefly?

2 A. I studied at the National Church of God By Faith in  
3 Atlanta, Georgia.

4 Q. As a pastor, do you do ministry work?

5 A. Yes, I do.

6 Q. And back in the fall of 2005, were you doing ministry  
7 work?

8 A. Yes.

9 Q. What type of ministry work do you do?

10 A. I volunteer at the Riverhead correctional facility.

11 Q. Do you work with a supervising Pastor?

12 A. Yes. Pastor Roy Kurtin.

13 THE COURT: Roy, R-O-Y.

14 THE WITNESS: Yes.

15 THE COURT: Curtis?

16 THE WITNESS: K-U-R-T-I-N.

17 THE COURT: Kurtin?

18 THE WITNESS: Yes.

19 Q. And what is the name of the program under which you  
20 volunteer?

21 A. It's called Safe Harbor mentoring program.

22 Q. Now, focussing your attention on November of 2005,  
23 were you conducting a workshop or a meeting at the jail  
24 facility?

25 A. Yes.

**Davis - Direct/Joseph**

1082

1 Q. When I say jail facility, was it Suffolk County jail?

2 A. Yes. It was Suffolk County correctional facility in  
3 Riverhead.

4 Q. During that meeting, did any of the prisoners give  
5 you a note?

6 A. Yes.

7 Q. Do you have the note that was given to you?

8 A. Yes, I have it.

9 Q. And by that I mean the original note?

10 A. Yes.

11 I have the original note.

12 Q. Did you bring it with you in court today?

13 A. Yes, I did.

14 Q. Could you please produce it.

15 Thank you.

16 MS. JOSEPH: Your Honor, may I have this marked  
17 as Plaintiff's Exhibit 61-B for identification purposes?

18 THE COURT: Yes.

19 MS. JOSEPH: And I'd like to move Plaintiff's  
20 Exhibit 61-B in evidence.

21 THE COURT: That's the original note, is it?

22 MS. JOSEPH: Yes.

23 THE COURT: The copy of the note that's in  
24 evidence as plaintiff's 61.

25 MS. FLYNN: May I see it?

**Davis - Direct/Joseph**

1083

1 THE COURT: Sure.

2 MS. FLYNN: No objection.

3 THE COURT: All right. Plaintiff's Exhibit 61-B  
4 in evidence.

5 (Plaintiff Exhibit 61-B in evidence.)

6 Q. Now, do you recall specifically what date the note  
7 was given?

8 A. It was given November 20th, 2005.

9 Q. And why are you certain it was given on November  
10 20th, 2005?

11 A. Because I only minister on a Sunday at the facility.

12 Q. And do you recall whether the note was given before  
13 or after the Thanksgiving holiday?

14 A. It was before the Thanksgiving holiday.

15 Q. Now, were you able to review any logs -- strike that.

16 In your dealings with Pastor Kurtin, are any  
17 logs kept as far as which inmates are in attendance at  
18 which meetings?

19 MS. FLYNN: Objection.

20 THE COURT: Yes. Sustained.

21 THE COURT: Do you want to get to the subject  
22 matter I'm permitting?

23 MS. JOSEPH: Yes, your Honor.

24 Q. After receiving this note, what did you do with it?

25 A. I put it in my pocket and I read it after I got home.



**Davis - Direct/Joseph**

1084

1 Q. And why did you read it after you got home?

2 A. Because I didn't know what was in the note and it was  
3 personal, and they were giving me requests, prayer  
4 requests, and I was told by the person that gave it to me  
5 to read this when you get home. So I stuck it in my  
6 pocket.

7 Q. And you said you read the note once you got home?

8 A. Once I got home I read the note.

9 Q. And after reading the note, did you do anything with  
10 the information?

11 A. Yes.

12 I called Pastor Kurtin the following morning.

13 Q. And did you discuss the note with your Pastor?

14 A. Yes, I did.

15 I read the note to him.

16 MS. JOSEPH: Nothing further.

17 THE COURT: Cross-examination.

18 MS. FLYNN: No questions, your Honor.

19 THE COURT: You may step down. Please call your  
20 next witness.

21 MS. JOSEPH: The plaintiff calls Pastor Roy  
22 Kurtin.

23

24

25

**Kurtin - Direct/Joseph**

1085

1 ROY KURTIN,

2 called as a witness, having first

3 affirmed, was examined and testified

4 as follows:

5 THE WITNESS: I affirm.

6 THE COURT: You can affirm. Have a seat.

7

8 DIRECT EXAMINATION

9 BY MS. JOSEPH:

10 Q. Pastor Kurtin, how long have you been a pastor?

11 A. 15 years.

12 Q. And where did you study?

13 A. Alliance Theological Seminary.

14 Q. And where is that?

15 A. They have a campus in Nyack, and also lower

16 Manhattan.

17 Q. Directing your attention to November of 2005. Were  
18 you conducting any prison ministries at the Suffolk County  
19 jailhouse?

20 A. I am the executive director of Safe Harbor mentoring  
21 program.

22 We are a program that assists men and women  
23 coming out of incarceration.

24 THE COURT: You've got to get closer to the  
25 microphone and keep your voice up.

**Kurtin - Direct/Joseph**

1086

1     A.    I am the executive director of Safe Harbor mentoring  
2     program. We have 35 volunteers that go into the jails on  
3     weekly basis to minister to the men and women.

4                 (Continued on next page.)

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**Kurtin - Direct/Joseph**

1087

1 BY MS. JOSEPH:

2 Q. And back in November of 2005, was Pastor Susan Davis  
3 one of your volunteers?

4 A. She is one of our volunteers.

5 Q. Did she go to the Suffolk County Jailhouse?

6 A. Yes.

7 Q. At some point in November 2005 did she call you  
8 regarding information she received at the Suffolk County  
9 Jailhouse?

10 A. Yes, she did.

11 Q. What did you learn?

12 A. She called me on a Monday morning after she had gone  
13 in on a Sunday to explain to me that she had received a  
14 letter that an inmate was sexually -- was allegedly to be  
15 sexually molested.

16 Q. What did you do with this information?

17 A. I immediately called Mr. Butch Langhorn, the  
18 assistant to Chief DiMarco.

19 THE COURT: You called who?

20 THE WITNESS: Butch Langhorn, L-A-N-G-H-O-R-N.

21 THE COURT: What's his first name?

22 THE WITNESS: Butch, B-U-T-C-H.

23 THE COURT: Butch?

24 THE WITNESS: Butch.

25 THE COURT: Who is he?

**Kurtin - Direct/Joseph**

1088

1 THE WITNESS: He's the assistant to Sheriff  
2 DiMarco.

3 BY MS. JOSEPH:

4 Q. What was discussed in that conversation?

5 A. I called Mr. Langhorn to let him know the information  
6 that the volunteer had received.

7 He made me aware that he had been aware of a  
8 situation that was going on there already. He was happy  
9 that I called him. He said that he's looking into it.  
10 He's aware of the problem.

11 Q. Specifically what did you tell Mr. Langhorn?

12 A. I explained to Mr. Langhorn that we had received a  
13 note from an inmate saying that she was sexually molested.

14 Q. How did Mr. Langhorn respond?

15 MS. FLYNN: Objection.

16 THE COURT: Overruled.

17 A. To my surprise, he said he was aware of it.

18 Q. Did he ask you who the inmate was?

19 A. I don't recall if that was in the conversation. I  
20 think I was surprised that he was aware of it, so we  
21 didn't -- our dialogue was not that long once he said he  
22 was aware of it and taking care of it.

23 Q. Did he ask you who the inmate was being sexually  
24 molested by?

25 A. No.

**Kurtin - Cross/Flynn**

1089

1 Q. Did he ask you what type of sexual contact did the  
2 inmate allege?

3 A. No.

4 Q. After you said that an inmate was alleging sexual  
5 abuse, did he ask you any questions to get further  
6 information about the incident?

7 A. He did not.

8 MS. JOSEPH: Nothing further.

9 THE COURT: Cross-examination.

10

11 CROSS-EXAMINATION

12 BY MS. FLYNN:

13 Q. You indicated that you were given this note in  
14 November 2005?

15 A. I was not given the note. I had a conversation to  
16 the volunteer who was given the note.

17 Q. Did you ever ask to see the note?

18 A. I did not ask to see the note.

19 Q. So you've never seen the note?

20 A. I did not see the note until recently.

21 Q. And your testimony is that you called and spoke to  
22 Mr. Langhorn on what date?

23 MS. JOSEPH: Objection.

24 THE COURT: Overruled.

25 A. I spoke to him on the Monday morning after the 20 or

Kurtin - Cross/Flynn

1090

1 21st then of November.

2 Q. And your testimony is when you spoke to him you did  
3 not give him the name of the person who was being the name  
4 of the person who was being sexually abused; is that  
5 correct?

6 A. That is correct.

7 Q. Did you have any information about the assault other  
8 than what was in the note that you were given?

9 A. I had no other information.

10 Q. And after that conversation with Mr. Laughlin  
11 (sic) --

12 A. Langhorn.

13 Q. Did you take any further steps regarding this  
14 complaint that you had been advised about?

15 A. I did not, because he said he was taking care of it.

16 Q. Did you ever follow-up to see if in fact something  
17 was done regarding the inmate who made that complaint?

18 Yes or no, sir, please.

19 A. I did not follow-up because the next month when I  
20 went to the Nassau County Jail Ms. Rickenbacker was there.

21 Q. Did you have any conversation with her at that point?

22 A. I said: Oh, you're here. She said: I was  
23 transferred because of the situation. That's all I had.

24 Q. And that was in December 2005?

25 A. Yes.

**Kurtin - Cross/Flynn**

1091

1 Q. Between the time that you got information in  
2 November, and the time that you saw Ms. Rickenbacker in  
3 Nassau in December, did you take any follow-up steps  
4 regarding the information that you say you were given?

5 A. I did not because --

6 Q. Thank you.

7 A. Okay.

8 Q. Did you call the police and tell them that someone  
9 told you that they were being sexually assaulted at the  
10 Suffolk County correctional facility?

11 Yes or no, please, sir. Yes or no?

12 A. No.

13 Q. Did you go to Newsday and give them a copy of this  
14 letter to tell them that there was a story that someone  
15 was being sexually assaulted at the Suffolk County  
16 correctional facility?

17 A. No.

18 Q. Thank you.

19 Other than this one phone call that you say you  
20 made, did you take any other steps regarding the fact that  
21 someone told you they were being sexually assaulted at the  
22 Suffolk County correctional facility?

23 A. I did not.

24 MS. FLYNN: I have no further questions.

25 THE COURT: Anything else?



**Kurtin - Redirect/Joseph**

1092

1 MS. JOSEPH: Just briefly.

2

3 REDIRECT EXAMINATION

4 BY MR. NORINSBERG:

5 Q. Pastor, why didn't you follow-up after you received  
6 information that the situation was being dealt with?

7 A. I was assured by Mr. Langhorn that it was taken care  
8 of, that he told me he was already aware of it and that  
9 steps were being taken to remedy it.

10 MS. JOSEPH: Nothing further.

11 THE COURT: Anything else?

12

13 RECROSS-EXAMINATION

14 BY MS. FLYNN:

15 Q. It's your testimony that you never said the name  
16 Lowrita Rickenbacker when you called Mr. Langhorn; is that  
17 correct?

18 A. Yes.

19 Q. Did you tell him where this sexual assault was  
20 supposedly taking place --

21 MS. JOSEPH: Objection.

22 Q. Yes or no?

23 MS. JOSEPH: The scope.

24 THE COURT: Overruled.

25 A. No.

**Kurtin - Redirect/Joseph**

1093

1 MS. FLYNN: I have no questions.

2 Thank you.

3 MS. JOSEPH: Nothing further, your Honor.

4 THE COURT: You may step down, Pastor.

5 (The witness steps down.)

6 THE COURT: Please call your next witness.

7 MR. NORINSBERG: At this time plaintiff calls

8 Investigator Terry Clark to the stand.

9 MS. FLYNN: Sorry, Judge. May we have a  
10 sidebar?

11 THE COURT: As soon as Mr. Norinsberg comes in.

12 MS. FLYNN: Thank you.

13 THE COURT: Come up.

14 (Continued on next page.)

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**Kurtin - Redirect/Joseph**

1094

1 (The following takes place at sidebar.)

2 MS. FLYNN: This is another witness that's not  
3 on the PT0.

4 THE COURT: Who is this witness?

5 MS. FLYNN: She's the corrections officer who  
6 took the statement of Ms. Ramos at the Nassau County  
7 correctional facility, the statement that's already into  
8 evidence. We had no information that they were going to  
9 be calling this witness.

10 THE COURT: What's this witness for? Who is  
11 examining?

12 MR. NORINSBERG: I'm examining her.

13 This witness will establish her interview with  
14 Ms. Ramos, her observations of Ms. Ramos, Ms. Ramos's  
15 demeanor.

16 She will introduce her report and findings  
17 relative to the investigation that she was involved with,  
18 and it's a link in the chain.

19 THE COURT: Why didn't you put this witness on  
20 the list?

21 MR. NORINSBERG: I'll tell you why.

22 Up until the time we picked a jury, they were  
23 acknowledging that the assault took place. When they  
24 changed their legal position at the start of trial is  
25 after we already submitted the JPT0. This was news to me.

**Kurtin - Redirect/Joseph**

1095

1 Now they made this an issue in the case and now  
2 we have to refute their claim that it never happened and  
3 that's how we're refuting it.

4 MS. FLYNN: The issue is not whether I'm  
5 refuting it or not. It's part of their claim. They have  
6 to prove -- and this cannot be a surprise to them -- they  
7 have to prove the underlying constitutional violation that  
8 Gary Feinberg sexually molested her.

9 It's not my job to agree to that. That is part  
10 of their proof and it can't come as a surprise. I don't  
11 know. This is the first time again and this is just  
12 becoming -- I'm sorry -- it's ridiculous.

13 THE COURT: I will sustain your objection.

14 Enough. The other witness I thought was  
15 somebody that added to the case. This, I do not.

16 MR. NORINSBERG: Just the observation, can she  
17 talk about her observation?

18 THE COURT: She can talk about nothing. I'm  
19 sustaining the objection. You should have put her name on  
20 the list.

21 (Continued on next page.)

22

23

24

25

**Ramos - Direct/Joseph**

1096

1 (The following takes place in open court.)

2 THE COURT: Please call your next witness.

3 MS. JOSEPH: Your Honor, the plaintiff calls

4 Rochelle Ramos.

5 THE COURT: Raise your right hand.

6

7 ROCHELLE RAMOS,

8 called as a witness, having been first

9 duly sworn, was examined and testified

10 as follows:

11

12 THE COURT: Please be seated.

13 Please state your full name and spell your last

14 name slowly for the record.

15 THE WITNESS: My name is Rochelle Ramos,

16 R-A-M-O-S.

17 THE COURT: You may proceed.

18 MS. JOSEPH: Thank you, your Honor.

19

20 DIRECT EXAMINATION

21 BY MS. JOSEPH:

22 Q. Good afternoon, Ms. Ramos.

23 A. Good afternoon.

24 Q. Are you married?

25 A. No.

Ramos - Direct/Joseph

1097

1 Q. Do you have any children?

2 A. I do.

3 I have two children. I have two daughters.

4 Jessica is 20 and Erica is 19.

5 They both attend the University of Maryland.

6 Q. Can you tell the jury a little bit about yourself.

7 What's your educational history?

8 A. I grew up in Northport, Long Island.

9 THE COURT: You have to slow down.

10 THE WITNESS: Sorry.

11 I grew up in Northport, Long Island.

12 THE COURT: You want us to hear it, right?

13 THE WITNESS: Yeah.

14 THE COURT: Then slow down.

15 A. I grew up in Northport, Long Island. I graduated  
16 from Northport High School in 1983.

17 I got married. I met and got married to my  
18 husband in November of 1985. I attended Syracuse  
19 University.

20 Q. What did you major in?

21 A. History.

22 Q. What about your employment history, could you tell  
23 the jury about that?

24 A. I worked for -- I was a legal recruiter for the  
25 better part of 15 years. I worked for the largest

Ramos - Direct/Joseph

1098

1 staffing company in New York City, Robert Half  
2 International, which is a publicly traded company.

3 I was hired by their recruiters to open a legal  
4 staffing division of their company. I opened the New York  
5 office.

6 And shortly thereafter opened 12 other offices  
7 around the country.

8 After about seven years I felt that given the  
9 amount of time that I spent on the road traveling away  
10 from my family, the kids were coming into where they were  
11 12, 13 years old where it could be, especially for girls,  
12 I thought could be a time when I had to be close.

13 And during my employment at Robert Half I went  
14 out and traveled through the offices that I had opened so  
15 I really came home from Thursday to Sunday.

16 So my husband and I decided that it would be a  
17 good time for me to jump out on my own and start my own  
18 company.

19 I worked for a small shop for many years and  
20 then I went corporate. I felt I had a good combination.

21 Q. What sort of law firms did you work with?

22 A. I worked with firms that were based in New York City,  
23 firms like Breed, Abbott, Morgan; Paul Weiss. I worked  
24 with firms that had branches in New York; Jones, Day,  
25 Evans and Paul, Shaw Pittman. I also worked with firms in

Ramos - Direct/Joseph

1099

1 the Washington, D.C. area and the Boston area who were  
2 interested in opening branches in the New York area and  
3 had been referred to me by my New York clients.

4 I also did New York start-ups of firms in D.C.  
5 and Boston.

6 Q. Are you currently employed?

7 A. I am not.

8 Q. Turning your attention to December 29, 2005, were you  
9 being housed at the Suffolk County Jailhouse?

10 A. I was.

11 Q. Why were you in jail?

12 A. Violation of probation.

13 Q. Did you have a medical problem that day?

14 A. I did.

15 I had a very bad stomachache for about a day and  
16 a half.

17 Q. Were you examined by a doctor?

18 A. I was.

19 Q. Where were you examined by a doctor?

20 A. In Suffolk County Jail, I guess, in the medical area.

21 Q. Tell us about that examination.

22 A. I went to the medical area. I was brought in to an  
23 exam room where there was a man and a woman and they were  
24 talking.

25 Q. I'm talking about the first exam that you had at



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1100

1 Suffolk County.

2 You mentioned you had a stomachache?

3 A. Yeah. Okay. I went. I'm sorry. It was a while  
4 ago.

5 Q. I understand. Just take your time.

6 A. Okay. I went to the medical unit and I saw a doctor,  
7 an older gentleman.

8 Q. Dr. Roginsky?

9 A. Okay.

10 He examined me very briefly and said that he  
11 wanted to send me to the hospital to have tests.

12 Q. As a result were you taken to the Suffolk County  
13 medical unit -- Central Suffolk Hospital?

14 A. I was.

15 Q. I'm getting mixed up too. It's not just you.

16 How did you get there?

17 A. I was escorted by two gentleman in the Sheriff's  
18 Department.

19 Q. Corrections officers?

20 A. I believe so.

21 Q. Once you got to Central Suffolk Hospital, were you  
22 examined?

23 A. I was.

24 Q. Describe that exam. What did they do?

25 A. Basically they brought me to a private emergency type

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1 room and I had a brief examination by a doctor. And I  
2 don't know if it was an MRI, it was like a full body kind  
3 of taking pictures.

4 And a couple hours later they came back and they  
5 explained to me and the people from the Sheriff's  
6 Department that they felt that I had an umbilical hernia  
7 and that it needed to be surgically repaired.

8 Q. Did there come a time when you returned back to the  
9 Suffolk County Jailhouse?

10 A. Yes.

11 Q. And was that about 5:00?

12 A. Yeah, sometimes after, because the people changed to  
13 the next shift.

14 Q. How did you get back to the Suffolk County Jailhouse?

15 A. In a sheriff's car.

16 Q. Once you got back to the jailhouse, were you examined  
17 again?

18 A. I was.

19 Q. Did you ask to be examined?

20 A. No.

21 Q. Did they explain why you had to be examined?

22 MS. FLYNN: Objection.

23 THE COURT: Overruled.

24 Q. Did they explain why you had to be examined?

25 A. They just said that was the rules. Everyone coming

Ramos - Direct/Joseph

1102

1 and going from the jail came and went through the medical  
2 division.

3 Q. Were you taken to an examination room at the Suffolk  
4 County Jailhouse?

5 A. Yes.

6 Q. And when you got to the room was anyone inside the  
7 medical examination room?

8 A. There was a man and a woman.

9 Q. Let's focus on this man.

10 Had you seen him before?

11 A. No.

12 Q. Did you later come to learn the name of this man?

13 A. Gary Feinberg.

14 Q. Now, did Mr. Feinberg examine you?

15 A. He did.

16 Q. Before he examined you, what happened to the woman  
17 that was in the room?

18 A. Well, they were talking and I thought she was  
19 speaking in French so I introduced myself in French.

20 Q. What did you say?

21 A. I just told them -- I told them what my name is. I  
22 probably know five words and used them all then.

23 He suggested that I not speak to him like that.

24 He found that that made him excited.

25 Q. What was going through your mind when he made that

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1 comment?

2 A. I don't know. I just thought maybe he was kidding  
3 around. Nothing really was odd. I just thought he was  
4 being nice. But then the girl left right after.

5 Q. And the door to the examination room, did it remain  
6 opened or closed after the door left?

7 A. Excuse me.

8 Q. I'm sorry. The door -- let me rephrase that.

9 The door to the examination room, did it remain  
10 opened or closed after the girl left?

11 A. No. He shut the door after she left.

12 Q. Once the female left the room, did Mr. Feinberg say  
13 anything to you?

14 MS. FLYNN: Your Honor, may we approach?

15 THE COURT: All right. Come up.

16 (Continued on next page.)

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**Ramos - Direct/Joseph**

1104

1 (The following takes place at sidebar.)

2 MS. FLYNN: May I take the exhibits off of the  
3 witness table? She seems --

4 THE COURT: You could have asked that in front  
5 of everybody.

6 MS. FLYNN: I'm sorry.

7 THE COURT: You don't need a sidebar. Yes, you  
8 can take them off.

9 MS. FLYNN: Thank you.

10 (Continued on next page.)

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Ramos - Direct/Joseph

1105

1 (The following takes place in open court.)

2 BY MS. JOSEPH:

3 Q. We were talking about the beginning of the  
4 examination.

5 Once this woman left the examination room, what  
6 did Gary Feinberg say to you?

7 A. Well, he wanted to explain to me the different  
8 aspects of what they said was wrong at the hospital.

9 He was sitting at his desk at that time and he  
10 had two or three books out. And I was sitting on the  
11 examining table.

12 And he was starting to explain to me that they  
13 said it was a hernia. He thought it was from my  
14 esophagus. He had different ideas.

15 So he said, why don't you come around so I can  
16 show you the pictures. Maybe you could understand it  
17 better.

18 I got up off the examination table, I came  
19 around to the front of his desk and he was talking and  
20 pointing.

21 Q. Did you remain in front of his desk during the entire  
22 examination or did you move somewhere?

23 A. Well, no.

24 Shortly after I came to the front of his desk  
25 and he was pointing and explaining and I could see and

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1106

1 understand what he was saying, he said to me why don't you  
2 come around, come closer, so you can understand.

3 And that made me feel comfortable because I  
4 could see and understand from where I was standing.

5 I was nervous. I was in jail. I wanted to be  
6 compliant, so I came around. But he was staring at me and  
7 made this eye to eye contact that, you know, I've never  
8 really been in that situation before where a doctor is  
9 waiting for you to get comfortable and explain to you  
10 something and staring at me and speaking in a slow  
11 whispery kind of breathy manner that made me not feel  
12 comfortable.

13 But I did come around to the side of his desk  
14 and did what he asked me to do.

15 Q. Now, at some point did he finish explaining and using  
16 the book to explain your condition?

17 A. Yes.

18 He said he wanted to examine me, to listen to my  
19 bowel signs, listen to my chest.

20 Q. Where did he tell you to go to begin the examination?

21 A. Sit on the table.

22 Q. Tell the jury what happened once you sat on the  
23 examination table?

24 A. Well, I guess, because I had a stomach problem he  
25 attempted to assist me to get up on the table. And so in

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1 getting up or while I was getting up he attempted to help  
2 me with his hands. And I'm not sure which came first or  
3 second because it just was fast, and I can't remember  
4 that, but I can say that when he put his hands on my back,  
5 his hands were low, like the top of your pants, by my tail  
6 bone, and his hand was just there too long and it was too  
7 soft.

8 Doctors are usually abrupt, quick. They never  
9 have enough time. He had all the time and he went slow  
10 and that was the beginning. To me it was just odd.

11 Q. You said when he helped you back his hand was too  
12 soft.

13 Specifically where was he touching you when he  
14 helped you lie down on the table?

15 A. At that point he was touching me. He had his hand on  
16 my lower back but he was like right in my waistband.

17 Q. When you say it was too soft, what do you mean?

18 A. I guess I always felt that doctors are abrupt and  
19 they are -- even if they want to help you lean back, it's  
20 a real quick crisp kind of thing.

21 This wasn't. It was slow. He was staring at  
22 me, waiting for me to look directly into his eyes and he  
23 was like licking his lips. It was disgusting.

24 Q. What happened after he helped you lay back on the  
25 examination table?



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1108

1 A. I remember at one point he started with the  
2 stethoscope as if he was going to listen to my chest and  
3 my heart.

4 But, really, I don't remember feeling the  
5 stethoscope because usually with the stethoscope they'll  
6 say it's cold or they do something like this with the  
7 stethoscope. It wasn't like that. I remember his hand  
8 being -- cupping my chest and holding it long.

9 Q. Now, had you had a breast exam before this?

10 A. Yeah.

11 Q. Was this anything like a breast exam you experienced  
12 before?

13 A. I have to say every breast exam I had I thought was  
14 quite mechanical and I didn't feel embarrassed and  
15 uncomfortable other than your typical feeling.

16 But this was -- I feel funny to say, but it  
17 seemed it was very sensual. He was holding it to feel it.  
18 He wasn't squeezing it for lumps.

19 Q. Where did he touch you after he helped you lay down  
20 and he was cupping your breast?

21 What did he do next during the exam?

22 A. He wanted to listen to the bowel signs. He put his  
23 hand on top of my abdomen and he reached in with his hand  
24 into my pants and he stopped when his hand was on top of  
25 my pubic bone, like right on top of my private area.

Ramos - Direct/Joseph

1109

1 Q. The stethoscope, were you able to feel the surface of  
2 the stethoscope?

3 A. No.

4 I remember thinking that's weird, I don't feel  
5 the cold. I didn't see him rub it.

6 Doctors think they're funny, they say it's going  
7 to be cold and they rub it. Those things stick out in my  
8 mind in an exam and it wasn't like that. I didn't feel  
9 the stethoscope.

10 At that point I started to cry and he kind of  
11 stopped and he asked me if he was hurting me and he didn't  
12 stop.

13 Q. When you say he didn't stop, did he touch you  
14 anywhere else?

15 A. He put his fingers inside me.

16 Q. When you say inside you, could you be more specific  
17 with the jury?

18 A. He put his hands inside my vagina.

19 Q. Could you describe how he did this?

20 A. Fast. He went like a knife, fast. He was not -- it  
21 was very aggressive.

22 Q. What did it feel like to you?

23 A. All I kept thinking was his fingernails feel like  
24 razor blades. They were so sharp. They were just sharp.  
25 They felt like razor blades and it was fast.

Ramos - Direct/Joseph

1110

1 But somebody yelled. The CO on the other side  
2 of the door asked if they were through with Ramos yet and  
3 he did *ssh*, like this to me, *ssh* (indicating), and I was  
4 already shushed because I was looking down at the floor  
5 and I was really upset.

6 I was crying and I was thinking; oh, my God,  
7 maybe he's done and they're next. I couldn't facilitate  
8 what was happening.

9 All I knew is that the hairs on my neck were  
10 standing up and I was like no spit in my mouth. I knew it  
11 was bad.

12 Q. Did you remain on your back during the entire  
13 examination?

14 A. No.

15 Q. Describe for the jury how your position changed  
16 during the exam?

17 A. He wants me to roll on my side because again he was  
18 listening to the bowel signs and things like that.

19 I wasn't sure if that was supposed to be from  
20 the front or back.

21 At one point he rolled me onto my side and my  
22 arm, if you could picture, I was laying on the table like  
23 this and he was standing over me and all of a sudden --  
24 and this stuck out in my mind so clearly is that I kept  
25 feeling something on my elbow. I just figured it was his

Ramos - Direct/Joseph

1111

1 belt buckle but it was warm and it was like -- it's very  
2 embarrassing for me to say this but it was like -- I  
3 didn't realize that was him and he was excited and he was  
4 the whole time he was rubbing up against me and obviously  
5 having pleasure.

6 But he rolled me to my side and I remember  
7 seeing the stethoscope but I don't remember feeling it.

8 You know, when a doctor examines you and they  
9 put the thing in their ears and they're like ssh and they  
10 look to listen, you're wondering what they're looking at.

11 Q. Did you see the stethoscope portion in his ears?

12 A. I don't remember seeing that and I don't remember  
13 usually the way they hold it between their fingers. I  
14 don't remember seeing that.

15 Q. When you were laying on your side, did he touch you  
16 anywhere else?

17 A. He put his hand right in the crack of my back side.

18 Q. What did that feel like when he did that to you?

19 A. If I wasn't sure something weird was happening I was  
20 definitely sure something weird was happening.

21 His hands were sweaty and hot and he stuck his  
22 hands inside my butt and that was really bad. That hurt  
23 really bad. I shot up so fast that I scared the crap out  
24 of him because he said oh, my God, did I hurt you.

25 All I could think about is he keeps trying to

Ramos - Direct/Joseph

1112

1 act like a doctor, but is this how a doctor acts. I mean,  
2 I could be in jail, I could be wherever, educated, not  
3 educate, that's not right. That's not right.

4 Q. When you say he kept trying to act like a doctor,  
5 what was he saying to you?

6 A. He was explaining to me, you know, when you have good  
7 bowel signs you'll hear a hollow kind of a knocking and  
8 when you don't, when there's a blockage, things are not  
9 moving. So, therefore, you don't hear the echo.

10 I'm thinking to myself, first of all, I don't  
11 even remember why I was here, what hurt. Second of all,  
12 he wants me to think this is normal and the whole time  
13 he's still rubbing against me.

14 Q. Just so we're clear, you had been examined by two  
15 other doctors that day?

16 A. Medical doctors from the jail and the doctor in the  
17 emergency room at the hospital in Riverhead. Neither one  
18 of them went anywhere near that. And neither one of  
19 them -- I mean, this guy who I found out was not a doctor,  
20 was a physician's assistant, made it very clear he thought  
21 I was very sexy and very pretty and at the end of the exam  
22 kissed me and I remember closing my teeth and feeling like  
23 that fleshy, but he bit me. He didn't make me bleed. He  
24 was angry. He wasn't -- I remember thinking if this is  
25 making him angry, why is he doing it. He bit me because I

Ramos - Direct/Joseph

1113

1 wouldn't open my mouth. I went like that (indicating).

2 And it was just disgusting. I was hysterical.

3 And he talked about two prescriptions; Prilosec,  
4 which is an anti-acid; and Bentyl to stop the cramps and  
5 he asked me if I was comfortable where I was being housed.

6 And I thought to myself oh, my God, I was locked  
7 in 23 hours a day and I would have done anything to get  
8 out of there and now I would have done anything to go back  
9 into that lock in at that particular moment.

10 The walk back to my cell was awful, laughing at  
11 me, asking me if I had a good time. It was really  
12 humiliating. It was really humiliating.

13 Q. When he was doing these things to you, did you cry  
14 out for help any time?

15 A. Never said a word. All I did was stare down and look  
16 at his shoes and think to myself; my God, these shoes,  
17 they were so scuffed and worn away.

18 I know that sounds like a silly detail but your  
19 mind tries to go anywhere but where it is and what's  
20 happening, so I didn't say a word. I just want to hurry  
21 up and go back to my cell.

22 Q. Once the exam ended, were you taken back to your  
23 cell?

24 A. Um-hum.

25 Q. Did you tell any of the COs what happened who took

Ramos - Direct/Joseph

1114

1 you back?

2 A. By that time it was probably after 8:00 at night.

3 Q. Turning your attention to December 30 of 2009, the  
4 following day, did there come a time when you were  
5 transported to Nassau County?

6 A. Yes.

7 Q. And how were you taken to Nassau?

8 A. Nassau County came to pick me up very early the next  
9 morning.

10 Q. Why were you being taken to Nassau?

11 A. I assumed that I was going back because the judge was  
12 going to try to release me before the holiday ended.

13 It was sometime after Christmas. I thought I  
14 was going home for New Year's. So I was really excited.

15 Q. So when you arrived at Nassau, were you able to see  
16 the judge?

17 A. Nope. I sat all day.

18 Q. What happened?

19 A. I don't know.

20 Judge Brown had an emergency in his family. I  
21 think his mother was very ill, and what not, and the  
22 CO came in and said that she was sorry, that he had an  
23 emergency, and he had to get off the bench and that they  
24 would give me a rescheduled date. And I completely  
25 flipped out.

Ramos - Direct/Joseph

1115

1 Q. Why did you flip out?

2 A. Flipped out because I knew one thing. That meant I  
3 was going back to Suffolk and I had to go through the  
4 medical area because that's what they told me. This is a  
5 routine and you can ask any CO in that jail will tell you  
6 I never gave them a hard time. I did and went where I was  
7 supposed to go and I just completely started screaming to  
8 the point where they stopped, jumped back, looked at me  
9 and went and got -- all I remember seeing is corporeals,  
10 sergeants, stripes coming and saying calm down, it's okay,  
11 relax, relax.

12 They went out. They spoke to the judge. The  
13 judge -- they spoke to somebody because they came back  
14 almost immediately and told me you are not going back.

15 Q. Well, did you tell them what happened to you at  
16 Suffolk?

17 A. Yep.

18 Q. And where were you taken if you weren't taken back to  
19 Suffolk?

20 A. I was taken to the offices, the sheriffs bureau of  
21 investigation which is in East Meadow next to the Nassau  
22 jail and I was spoken to.

23 There were a couple of investigators. I think  
24 there were two men, one woman, and I explained to them  
25 what happened. I was there for hours and actually had the



Ramos - Direct/Joseph

1116

1 psychiatrist from the jail come over from Nassau. They  
2 brought over my medication. They did anything possible to  
3 calm me down so they could get a statement.

4 But at some point during the middle they brought  
5 me through like a tunnel which I never went outside but I  
6 went to the Nassau County Medical Center so I guess they  
7 used the tunnels underneath and brought me under and I was  
8 examined by an older Caribbean doctor.

9 And the female CO or investigator, excuse me,  
10 stayed in the room with me because there was no way I was  
11 staying in a room alone.

12 MS. FLYNN: Objection, your Honor, move to  
13 strike. This is not responsive to any question.

14 THE COURT: No. Motion denied.

15 A. She stayed with me. She spoke to him and told him  
16 what the judge wanted. The bottom line is he examined me.  
17 He put my legs up into stirrups.

18 MS. FLYNN: Objection, your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: What does that mean?

21 BY MS. JOSEPH:

22 Q. You can continue.

23 You were talking about the examination that took  
24 place after the incident.

25 A. Yes.

Ramos - Direct/Joseph

1117

1 He put my legs up into stirrups and there was a  
2 big lamp and he had glasses and gloves on and a  
3 stethoscope and he put the light and then he used what was  
4 like -- I don't know what you call that thing. It slides  
5 inside you to do a vaginal open and they opened it up,  
6 like a clamp, and I jumped back. It was just way too  
7 sore.

8 He stopped, took it out, and he put like a gel  
9 and then he put it back in and I can't say that it was  
10 more comfortable than it was before but I heard him saying  
11 that there was --

12 MS. FLYNN: Objection.

13 THE COURT: Sustained.

14 BY MS. JOSEPH:

15 Q. As a result did they do anything else to you during  
16 this medical examination?

17 A. I don't believe so.

18 Q. As a result of the medical examination did they find  
19 any injuries?

20 MS. FLYNN: Objection.

21 THE COURT: I didn't hear the question.

22 BY MS. JOSEPH:

23 Q. As a result of the medical examination did you learn  
24 what your injuries were?

25 MS. FLYNN: Objection, your Honor.

Ramos - Direct/Joseph

1118

1 THE COURT: Just yes or no.

2 A. Yes.

3 Q. And what was your injury?

4 MS. FLYNN: Objection.

5 THE COURT: Sustained.

6 BY MS. JOSEPH:

7 Q. Describe your injury?

8 MS. FLYNN: Objection.

9 THE COURT: Overruled.

10 A. I had severe pain on the right side of my vaginal  
11 wall. I had trouble going to the bathroom. It burned. I  
12 had to put gloves on to try to open myself up. And pardon  
13 the graphic nature of what I'm saying, you wear gloves to  
14 open myself up so that when I did urinate it didn't go --

15 MS. FLYNN: Objection, your Honor. I move to  
16 strike.

17 THE COURT: Motion denied.

18 BY MS. JOSEPH:

19 Q. Were you given any medication as a result of this  
20 irritation that you had?

21 A. He gave me some kind of I think it was either  
22 bacitracin or some kind of a clear jelly-like substance.

23 Q. Could you please describe for the jury what sort of  
24 impact this incident with Gary Feinberg has had on you?

25 A. Well, I don't think it's any secret I have had

Ramos - Direct/Joseph

1119

1 anxiety issues in the past. I mean, it's an open record.  
2 I have panic attacks and posttraumatic stress. For the  
3 most part I have been able to function. I'm completely  
4 unemployed. I'm on disability.

5 Just to me, as a woman, he stole something from  
6 me that it doesn't matter what anybody hear says or gives  
7 me. It doesn't matter because what he stole nobody in  
8 this room could ever give back to me.

9 I have the loss of intimacy, the fear of being  
10 taken advantage of. Whether or not it was in a jail or I  
11 wasn't in jail, you know I know the difference between  
12 right and wrong and I made mistakes and I have been  
13 arrested. You can say 5, 10, 20 times. What he stole I  
14 don't know how to get back. The last two-and-a-half,  
15 three years, have been so awful that I'm sure that you  
16 people all know it's been difficult to even get here.

17 That's not who I was. I was a woman that had  
18 everything going for me. And, again, I have struggles.  
19 I'm an addict. I'm in recovery, not recovered. I have  
20 used crack. I have been through things in life that have  
21 been up and down. But this has taken me to a place in my  
22 life that I just can't turn around. You can't send me to  
23 rehab and I'll be better. There's no pill. It's like,  
24 you know, I've been alone since this happened. I have  
25 zero relationships. If you hug me, squeeze me, pull me,

**Ramos - Cross/Flynn**

1120

1 it sends me to a spot that I can't get out of. The only  
2 way I feel better is to make myself feel worse.

3 So I don't know what to say how my life has  
4 changed. In every way it's changed. It's just really  
5 crappy.

6 MS. JOSEPH: Nothing further.

7 THE COURT: Cross-examination.

8

9 CROSS-EXAMINATION

10 BY MS. FLYNN:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. You indicated before that at some time you were  
14 employed as was described as a headhunter?

15 A. Yes.

16 Q. And you worked for a lot of different companies,  
17 large companies?

18 A. Yes.

19 Q. Did you bring any proof to show this jury about the  
20 fact that at any time in your life you've been gainfully  
21 employed?

22 A. No, I did not.

23 MS. JOSEPH: Objection, your Honor.

24 THE COURT: Overruled.

25

**Ramos - Cross/Flynn**

1121

1 BY MS. FLYNN:

2 Q. When you went back in the evening to the Suffolk  
3 County Jail and you went back into the examination room  
4 where Gary Feinberg was, did you observe that there was  
5 another doctor there in the room?

6 A. I'm sorry, could you repeat that.

7 Q. When you went back to the Suffolk County Jail and  
8 were examined by Gary Feinberg when you first walked into  
9 the room, did you observe that there was another doctor in  
10 the room?

11 A. I don't recall.

12 Q. You indicated just now in front of the jury that Gary  
13 Feinberg closed the door to the examination room?

14 A. I did say that, yes.

15 Q. Do you recall Ms. Ramos coming to my office for a  
16 deposition on May 6, 2008?

17 A. Yes.

18 Q. Do you recall being placed under oath?

19 A. Yes, I do.

20 MS. FLYNN: I apologize, your Honor.

21 (Pause in proceedings.)

22 BY MS. FLYNN:

23 Q. Page 80, line 19:

24 "QUESTION: Did Gary close that door?

25 "ANSWER: I don't know. "

**Ramos - Cross/Flynn**

1122

1 THE COURT: I'm sorry, I didn't hear a word you  
2 said.

3 MS. FLYNN: I'm sorry, Judge.

4 THE COURT: You're mumbling. Keep your voice  
5 up.

6 MS. FLYNN: I'm sorry.

7 Q. Page 80, line 19:

8 "QUESTION: Had Gary closed that door?

9 "ANSWER: I don't know."

10 Do you remember being asked that question and  
11 giving that answer?

12 A. Whatever it says in that document I would say that if  
13 I said that then yes.

14 Q. And do you remember giving a statement to the Nassau  
15 County Sheriff's Department right after you advised them  
16 of the fact that you were claiming that Gary Feinberg had  
17 assaulted you?

18 A. Yes, I do remember that.

19 Q. And isn't it true that in that statement you never  
20 mentioned anything about Gary Feinberg putting anything in  
21 your rectal area; isn't that true?

22 A. I don't recall.

23 Q. Isn't it true that there's nothing in that statement  
24 about Gary Feinberg cupping your chest?

25 A. I don't recall 100 percent what the statement said,

**Ramos - Cross/Flynn**

1123

1 but the statement was shortly thereafter so I would have  
2 to --

3 MS. JOSEPH: Objection.

4 THE COURT: Overruled.

5 BY MS. FLYNN:

6 Q. And is there anything in that statement about  
7 Gary Feinberg biting you?

8 A. I don't recall.

9 Q. Now, when you were first admitted or when you first  
10 entered the Suffolk County correctional facility which was  
11 about December 22nd, 2005?

12 A. Okay.

13 Q. Is that correct?

14 A. I don't recall.

15 THE COURT: You said December 22nd?

16 MS. FLYNN: Yes. 2005.

17 BY MS. FLYNN:

18 Q. You had just come from the Nassau County Correctional  
19 Facility, correct?

20 A. Correct.

21 Q. And when you got to the Suffolk County correctional  
22 facility were you seen by a woman, a therapist at the  
23 Suffolk County correctional facility?

24 A. I'm not. It's going back some time. I can't recall.

25 Q. Do you remember seeing a woman who is located in the



**Ramos - Cross/Flynn**

1124

1 medical unit near the psychiatrist?

2 A. In the mental health area?

3 Q. Yes.

4 A. I believe so.

5 Q. You told that woman that you were supposed to have a  
6 court date that date and you thought you were going to be  
7 released, you were going to see Judge Brown and you  
8 thought you were going to be released?

9 A. I really don't recall what the conversation was. I'm  
10 sorry.

11 Q. Was it your impression when you were at the Suffolk  
12 County facility that you were scheduled to be released  
13 from custody shortly?

14 A. I think I had hoped. I don't know if I thought for  
15 sure. I certainly hoped.

16 Q. Didn't you just tell the jury on direct examination  
17 that you expected to be released from custody when you saw  
18 Judge Brown?

19 A. I said I had hoped that I could go home for the  
20 holidays.

21 Q. You told the therapist at the Suffolk County  
22 correctional facility that you were going through  
23 withdrawals?

24 A. I really don't recall that conversation.

25 Q. Did you also tell that therapist that you had

**Ramos - Cross/Flynn**

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1 cooperated with the FBI?

2 A. I'm sorry.

3 MS. JOSEPH: Objection.

4 THE COURT: Overruled.

5 A. I really don't recall that conversation.

6 I remember seeing somebody in that area and we  
7 had discussion about medication and different things, but  
8 I can't clarify that. I'm sorry.

9 Q. Well, while you were at the Nassau County  
10 Correctional Facility, did you cooperate with the Nassau  
11 County Correctional Facility in any way?

12 A. Yes.

13 Q. Were you an informant for them?

14 A. I don't know what that means.

15 Q. Did you cooperate with them by giving them  
16 information about drugs?

17 A. They asked me questions about certain things that  
18 were going on in the dorm. Whatever information, if I had  
19 it, I was happy to give it to them. I don't know if that  
20 would be an informant.

21 Q. Did this happen while you were at the Nassau County  
22 correctional facility prior to the time you came to the  
23 Suffolk County correctional facility?

24 A. Yes.

25 Q. When you were in the Nassau County Correctional

**Ramos - Cross/Flynn**

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1 Facility in December did you meet somebody named Lowrita  
2 Rickenbacker?

3 A. Say that one more time.

4 Q. When you were in the Suffolk County correctional  
5 facility in December -- withdrawn.

6 When you were in the Nassau County correctional  
7 facility in December, did you meet someone named Lowrita  
8 Rickenbacker?

9 A. I do not recall meeting her, but I had been told that  
10 we did pass through each other in the bull pen being  
11 transported, but I really have no recollection of meeting  
12 her.

13 Q. That would be in December 2005?

14 A. It sounds about right.

15 Q. In Nassau?

16 A. Yes.

17 Q. This statement that you gave regarding what you say  
18 happened with you and Gary Feinberg, the statement that  
19 you gave to Nassau, you swore to that statement; is that  
20 correct?

21 A. I believe so.

22 Q. And you gave a statement to someone from Suffolk,  
23 Investigator Starke, correct?

24 A. I remember, yeah. I gave statements, absolutely.

25 Q. You swore those statements were true?

**Ramos - Cross/Flynn**

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1 A. I did.

2 Q. And have you ever given a false sworn written  
3 statement to any law enforcement agency?

4 A. Have I ever what?

5 Q. Have you ever given a false sworn statement to a law  
6 enforcement agency?

7 A. Not to the best of my knowledge.

8 Q. Do you remember reporting on Monday, July 22nd, 2009,  
9 to the Nassau County police that you were the victim of  
10 physical force robbery by an unknown black male and then  
11 later on recanting that statement?

12 MS. JOSEPH: Your Honor, may we approach?

13 THE COURT: Come up.

14 (Continued on next page.)

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1 (The following takes place at sidebar.)

2 MS. JOSEPH: Counsel is trying to back door  
3 arrest incidents and your Honor ruled any type of arrest  
4 was not admissible.

5 The only things that were admissible were  
6 convictions. The point that she's bringing out, I assume  
7 she's bringing out on credibility that she made a false  
8 claim to the police or something like that.

9 MS. FLYNN: Yes.

10 THE COURT: I'll allow that. Yes.

11 (Continued on next page.)

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**Ramos - Cross/Flynn**

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1 (The following takes place in open court.)

2 BY MS. FLYNN:

3 Q. Ms. Ramos, isn't it true that on Monday, July 22nd,  
4 2009, you reported to the police that you were the victim  
5 of a physical force robbery by an unknown black male; is  
6 that correct?

7 A. Yes.

8 Q. And you went to the police station and you signed a  
9 statement to the effect; is that correct?

10 A. I believe so.

11 Q. And you were advised that filing a false statement  
12 was against the penal law, correct?

13 A. Yes.

14 Q. And you signed that statement, correct?

15 A. I believe so.

16 Q. And you signed that statement because you had  
17 actually left your pocketbook behind in a medical office  
18 when you attempted to break into that medical office; is  
19 that correct?

20 MR. NORINSBERG: Objection.

21 MS. JOSEPH: Objection, your Honor.

22 THE COURT: Sustained.

23 MS. JOSEPH: Can we approach or move to strike  
24 this. This is in violation --

25 THE COURT: Strike what? There's no answer. So

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1 there's nothing to strike.

2 MS. JOSEPH: The line of questioning.

3 THE COURT: I don't strike questions because  
4 questions are not evidence.

5 The jury knows that unanswered questions are to  
6 be ignored. The only evidence is the answered questions.

7 BY MS. FLYNN:

8 Q. Isn't it true, Ms. Ramos, that later that day you  
9 advised the police that you had in fact lied in that  
10 statement and that there had been no robbery; is that  
11 correct?

12 MS. JOSEPH: Objection, your Honor. It's on the  
13 same basis as before. This is in violation of your  
14 Honor's motion.

15 THE COURT: No, it's not. It's precisely in  
16 accord with my ruling.

17 Overruled.

18 MS. FLYNN: Thank you, your Honor.

19 BY MS. FLYNN:

20 Q. You've been arrested before your incident with  
21 Gary Feinberg; is that correct?

22 A. Yes.

23 MS. JOSEPH: Objection.

24 THE COURT: Sustained.

25 MS. JOSEPH: Move to strike the response, your

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1 Honor.

2 THE COURT: Move to strike what?

3 MS. JOSEPH: The response.

4 THE COURT: There was a response?

5 MS. JOSEPH: Yes.

6 THE COURT: I didn't hear it. If there was, I  
7 grant your motion to strike the response. The jury, if  
8 you heard it, disregard it.

9 MS. FLYNN: I'm sorry, judge, may we approach?

10 THE COURT: It's not necessary. I told you I'm  
11 not permitting arrests.

12 MS. FLYNN: Judge, I'm sorry. You indicated in  
13 terms of damages you were going to allow arrests. I'm  
14 sorry.

15 THE COURT: Members of the jury, we're going to  
16 take a 15 minute recess.

17 Please don't discuss the case. Keep an open  
18 mind. Please recess yourselves.

19 (The jury is excused.)

20 THE COURT: Yes, I recall now that on the  
21 subject of damages and emotional distress, yes.

22 MS. JOSEPH: Your Honor, you were very  
23 consistent with your ruling on arrests and underlying  
24 facts for arrests.

25 You said that was not to be admitted, that you



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1 did not believe arrests should come in.

2 There was an issue that was left to the side  
3 regarding the plaintiff's mental history that you said you  
4 would reserve judgment on that with respect to damages and  
5 you said with respect to that, that may come in because it  
6 goes to damages.

7 However, as far as arrests, you were very  
8 consistent on that issue. You said if there was no  
9 convictions, then the underlying facts, the arrests, all  
10 of that shouldn't come in. You were very consistent.

11 THE COURT: We're talk about two different  
12 subjects.

13 Of course arrests are not admissible with  
14 respect to liability or any other matter.

15 But they are depending upon the type of arrests  
16 and what happened are admissible with respect to emotional  
17 distress.

18 Once a plaintiff claims damages for emotional  
19 distress, her entire life is an open book and there's a  
20 waiver of any kind of objection to any kind of incident  
21 that might cause emotional distress in my view.

22 MS. JOSEPH: Your Honor, you actually specified  
23 that arrests, because they're mere accusations, wouldn't  
24 come in, but incarcerations would.

25 At that point we asked defense counsel what

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1 specific arrests slash incarcerations they intended on  
2 bringing in and there really wasn't much of an offer of  
3 proof at that point.

4 Now although they were specifically asked so we  
5 could address it, they did not specifically bring it in  
6 during the motion. You said no arrests come in. You said  
7 only convictions come in and you would allow that.

8 THE COURT: If I said that, I was in error. And  
9 I don't think I said that arrests don't come in as far as  
10 emotional distress is concerned.

11 MS. JOSEPH: Actually more specifically, your  
12 Honor, when we asked opposing counsel what arrests they  
13 planned on bringing in they were not responsive. They did  
14 not --

15 THE COURT: Now they're going to bring it in and  
16 I'm going to allow it on the issue of emotional distress,  
17 yes.

18 There's no doubt that arrests cause emotional  
19 distress, because I assume you're claiming emotional  
20 distress.

21 MS. JOSEPH: Yes, your Honor.

22 THE COURT: It's probably your main item of  
23 damage, correct?

24 MS. JOSEPH: Correct.

25 THE COURT: I'm allowing it.

**Ramos - Cross/Flynn**

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1 Anything else at this time?

2 MS. FLYNN: I just want to make sure what I can  
3 ask her about her arrests.

4 THE COURT: Go ahead.

5 MS. FLYNN: She was arrested five times before  
6 the arrest for which he was in jail when this incident  
7 happened and she's been arrested twice since then.

8 THE COURT: I'll let you bring it out.

9 MS. FLYNN: Thank you.

10 MS. JOSEPH: Are all of those within the 10  
11 years?

12 THE COURT: 10 years has nothing to do with it.  
13 10 years is under Rule 609 for convictions. This is not  
14 admissible on the issue of convictions or credibility.  
15 It's solely on the issue of damages.

16 For example, you're going to claim and make a  
17 closing argument or Mr. Norinsberg is going to make a  
18 closing argument that there's been tremendous emotional  
19 distress here and ask the jury for a lot of money I  
20 assume.

21 MS. JOSEPH: Well, your Honor --

22 THE COURT: Excuse me. And defense counsel has  
23 a right to say we did not cause all of the emotional  
24 distress that this plaintiff has suffered from. She has  
25 suffered a lot of emotional distress before this and after

**Ramos - Cross/Flynn**

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1 this that has nothing to do with this case and you cannot  
2 compensate her for that.

3 MS. JOSEPH: Your Honor, I understand that.

4 I respectfully request the vein in which  
5 opposing counsel is asking the question is for  
6 impeachment.

7 THE COURT: You make your objection when she  
8 does it and I'll decide that. I'm going to allow it.

9 Anything else at this time?

10 MS. FLYNN: No.

11 THE COURT: Not hearing anything, we're going to  
12 take a recess.

13 (Recess taken.)

14 (Continued on next page.)

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**Ramos - Cross/Flynn**

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1 (Following a recess.)

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3 THE CLERK: Jury entering.

4 (Jury enters the courtroom.)

5 THE COURT: Please be seated, members of the  
6 jury.

7 You may proceed.

8 MS. FLYNN: Thank you, your Honor.

9 BY MS. FLYNN:

10 Q. Ms. Ramos, I just want to go back to the incident  
11 with Gary Feinberg.

12 While you were in the room with Gary Feinberg,  
13 Gary told you that he could help you if you were a good  
14 girl and he could help you get your medication.

15 Is that correct?

16 A. Yes.

17 Q. And he told you that if you were a smart girl, he  
18 could make things more comfortable for you.

19 Is that correct?

20 A. Yes.

21 Q. And you had a conversation with him where you told  
22 him that you hated jail, and it was really dark and you  
23 were really hungry.

24 Correct?

25 A. I might have.

Ramos - Cross/Flynn

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1 Q. Okay.

2 But he asked you if he could help you make it  
3 better.

4 Is that correct?

5 A. I'm not -- I don't recall that.

6 Q. All right.

7 Do you remember at your deposition being asked  
8 these questions and giving these answers, page 83, line 9:

9 Was he doing this while you --

10 THE COURT: Question?

11 BY MS. FLYNN:

12 Q. Question: Was he doing this while you were still  
13 lying on your back?

14 Answer: Yes.

15 Question: At that point, what did he do next?

16 Answer: He was talking really, really slow. He  
17 was asking me if I liked being in jail. I told him I  
18 hated it. I told him it was really dark. I was really  
19 hungry. I really didn't feel good.

20 He asked me if I liked being locked up 23 hours  
21 a day. I said no. He asked me if I would like him to  
22 make it better. I asked him what he meant, and the whole  
23 time his body was moving weird on my arm --

24 THE COURT: I don't know where the question  
25 ended.

**Ramos - Cross/Flynn**

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1 This is all a question?

2 MS. FLYNN: No.

3 This is the answer.

4 THE COURT: You have to say question and answer.

5 MS. FLYNN: Okay.

6 THE COURT: If someone looked at this record six  
7 months from now, they wouldn't know where the answer  
8 started or the question ended, would they, unless you say,  
9 question and answer.

10 MS. FLYNN: I'll start again, your Honor.

11 BY MS. FLYNN:

12 Q. Question: At that point what did he do next?

13 Answer: He was talking really, really slow. He  
14 was asking me if I liked being in jail. I told him I  
15 hated it. I told him it was really dark. I was really  
16 hungry. I really didn't feel good.

17 He asked me if I liked being locked up 23 hours  
18 a day. I said no. He asked me if I would like him to  
19 make it better. I asked him what he meant. The whole  
20 time his body was moving weird on my arm, and his hands,  
21 one hand was, like, rubbing on my stomach and the other  
22 hand was inside me.

23 And do you recall being asked that question and  
24 giving that answer?

25 A. Yes.

**Ramos - Cross/Flynn**

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1 Q. And when you left the exam room, you didn't say  
2 anything to anybody at the Suffolk County jail about what  
3 had happened to you.

4 Is that correct?

5 A. That's correct.

6 Q. And you were picked up the next morning by two women  
7 corrections officers from the Nassau County Correctional  
8 Facility.

9 Is that correct?

10 A. I was picked up by Nassau County, yeah.

11 Q. And those were two women?

12 A. I'm not sure.

13 Q. And they picked you up in a suburban?

14 A. I can't recall.

15 Q. But you didn't say anything to those women, or  
16 corrections officers, about what had happened to you at  
17 the jail on the ride from Riverhead into East Meadow.

18 Isn't that correct?

19 A. That's correct.

20 Q. And that was fairly early in the morning?

21 A. Yes.

22 Q. And then you were at the courthouse in Nassau County.

23 Is that correct?

24 A. Yes.

25 Q. And you waited at that courthouse until about 3:30.



**Ramos - Cross/Flynn**

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1 Is that correct?

2 A. I waited all day.

3 Q. And you didn't say anything to anyone there about  
4 what Gary Feinberg had did to you -- done to you.

5 Is that correct?

6 A. I didn't say anything.

7 Q. And the only time that you said something was when  
8 they told you that you were going back to Suffolk County.

9 Is that correct?

10 A. Yes.

11 Q. Prior to ever meeting Gary Feinberg, you have been  
12 arrested.

13 Correct?

14 A. Yes.

15 THE COURT: I want to tell the jury about these  
16 arrests.

17 Arrests have nothing to do with liability in  
18 this case. Arrests are merely accusations. Arrests have  
19 nothing to do with the credibility of this witness.  
20 Arrests have nothing to do with liability on the part of  
21 the county or the Suffolk County Correctional Facility, or  
22 the Suffolk County Sheriff's Department.

23 The only reason I'm allowing this in is on the  
24 issue of damages. In the event you should find a verdict  
25 in favor of the plaintiff against the County of Suffolk,

**Ramos - Cross/Flynn**

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1 one of the items of damages are emotional distress  
2 allegedly caused by this incident.

3 The defense has a right to show that there are  
4 other instances in her life, the life of the plaintiff,  
5 that also caused emotional distress. That's part of the  
6 issue of damages. It has nothing to do with liability.

7 So disregard it as far as liability, any  
8 arrests. It means nothing, except on the issue of  
9 emotional distress.

10 You may proceed.

11 MS. FLYNN: Thank you, your Honor.

12 BY MS. FLYNN:

13 Q. You have been -- you were arrested prior to meeting  
14 Gary Feinberg.

15 Is that correct?

16 A. Yes.

17 Q. And you were arrested on five occasions.

18 Is that correct?

19 A. I have been arrested before.

20 Q. And you have been arrested on five occasions.

21 Is that correct?

22 A. I don't recall how many times.

23 But I have been arrested before.

24 MS. JOSEPH: Your Honor, we can stipulate to the  
25 five arrests, just to move things along.

**Ramos - Cross/Flynn**

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1 THE COURT: Thank you, very much, but counsel  
2 doesn't have to.

3 Do you want to accept that stipulation?

4 MS. FLYNN: That's fine, your Honor.

5 THE COURT: Okay.

6 BY MS. FLYNN:

7 Q. Is it fair to say that you were incarcerated in the  
8 Nassau County Correctional Facility on October 29, 2005,  
9 and that was the incarceration leading up to your being  
10 transferred to the Suffolk County Correctional Facility in  
11 December of 2005?

12 A. Yes.

13 Q. And had you ever been incarcerated prior to October  
14 29, 2005?

15 A. I think so.

16 Q. And --

17 A. Not sure.

18 Q. And how many times had you been incarcerated before  
19 October 29, 2005?

20 A. I really wouldn't be able to say how many times.

21 I just know I -- have been in trouble -- I've  
22 had problems before.

23 Q. Well, have you been incarcerated more than once?

24 A. Pardon me?

25 Q. Have you been incarcerated more than one other time?

**Ramos - Cross/Flynn**

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1 A. I believe so.

2 Q. Have you been incarcerated more than five other  
3 times?

4 A. I'm not sure about how many other times.

5 Q. And could you recall where you have been incarcerated  
6 other than the incarceration in October at the Nassau  
7 County Correctional Facility?

8 A. I have been to Nassau County Jail and I have been to  
9 Suffolk County jail.

10 That's it.

11 Q. And since the incident that you alleged happened on  
12 December 29th, 2005 with Gary Feinberg, you have been  
13 arrested on two more occasions.

14 Correct?

15 A. I'm not sure how many times.

16 I'm really not sure.

17 Q. Could it have been more than two?

18 A. It could have been more.

19 If I remembered, I would tell you how many. I  
20 just don't remember.

21 Q. Well, do you recall being arrested on September 12,  
22 2009?

23 A. I was arrested in September. Yes.

24 Q. Do you recall being arrested in June of 2009?

25 A. Yes.

**Ramos - Cross/Flynn**

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1 Q. Were you arrested on more occasions than that since  
2 your incident with Gary Feinberg?

3 A. I don't believe so.

4 Q. On May 31, 2005, were you admitted to  
5 North Shore Hospital for an overdose of drugs?

6 A. I went to North Shore Hospital.

7 Q. And that was because you had overdosed on drugs.  
8 Correct?

9 A. I don't recall why.

10 I just remember that I did go to the hospital.

11 Q. Well, they put you into ICU.

12 Correct?

13 A. I don't recall.

14 It was how many -- a long time ago.

15 Q. We are talking about May of 2005.

16 A. Okay.

17 Q. I'm going to show you what's been marked as  
18 Defense Exhibit U for identification.

19 I just ask you to look at this.

20 (Whereupon, there was a pause in the  
21 proceedings.)

22 A. Okay.

23 Q. And does that refresh your recollection that on May  
24 31st, 2005, you were admitted to the North Shore  
25 University Hospital at Plainview for an overdose?

**Ramos - Cross/Flynn**

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1 A. Yes.

2 Q. And is that true?

3 A. Yes.

4 Q. And, Ms. Ramos, do you recall being treated at a  
5 facility called The Watershed?

6 A. Yes.

7 Q. And that's a substance abuse facility?

8 A. It's a MICA program.

9 Q. I'm sorry?

10 A. It's a MICA program.

11 Q. A MICA program?

12 A. Um-hmm.

13 Q. And you went to The Watershed treatment facility on  
14 three separate occasions.

15 Is that correct?

16 A. If that's what the records indicate.

17 I have been there more than once.

18 Q. Okay.

19 Well, do you recall being there in March of --

20 MS. FLYNN: Withdrawn.

21 BY MS. FLYNN:

22 Q. Do you recall being admitted there on March 26, 2002,  
23 and remaining there until April 1st, 2002?

24 A. Okay.

25 Q. Do you recall that?

**Ramos - Cross/Flynn**

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1 Is that a yes?

2 A. Yes.

3 Q. And you went there because you had a cocaine  
4 dependency.

5 Is that true?

6 A. Yes.

7 Q. And you also went there because you had general  
8 anxiety disorder?

9 A. Yes.

10 Q. And you were suffering from a major depression.

11 Correct?

12 A. That's correct.

13 Q. And at the time that you were admitted to that  
14 facility, in March of 2002, you were using approximately  
15 \$1,500 to \$2,000 worth of cocaine a day.

16 Is that correct?

17 A. I was definitely using cocaine.

18 Yes.

19 Q. Well, when you went to The Watershed facility, you  
20 went there for treatment.

21 Correct?

22 A. Yes.

23 Q. And in order to get good treatment, it was important  
24 to tell the physicians and the clinicians there the truth  
25 about your condition.

**Ramos - Cross/Flynn**

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1 Correct?

2 A. Correct.

3 Q. Do you recall telling them that you were using  
4 approximately \$1,500 to \$2,000 worth of cocaine a day?

5 MS. JOSEPH: Objection, your Honor.

6 THE COURT: Overruled.

7 Again, members of the jury, this has nothing to  
8 do with credibility. It has nothing to do with liability  
9 or what happened allegedly with Gary Feinberg or any of  
10 the other issues and liability.

11 This is only with respect to damages. The  
12 plaintiff, if she prevails, is entitled to damages for  
13 emotional distress from this incident, and for  
14 humiliation, as I will explain to you.

15 On the other hand, the defendants are entitled  
16 to show other incidents in the life of the plaintiff that  
17 could also have caused emotional distress.

18 BY MS. FLYNN:

19 Q. Do you recall telling them at The Watershed that you  
20 were using \$1,500 to \$2,000 worth of cocaine a day prior  
21 to your admission?

22 A. I told them I used cocaine.

23 I don't recall putting a dollar amount.

24 Q. And do you recall telling them that you were also  
25 taking approximately 20 pills of Darvon, or Darvocet prior



Ramos - Cross/Flynn

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1 to your admission?

2 A. I was definitely taking pills.

3 Q. And do you recall telling them there that you were  
4 taking approximately five pills of OxyContin prior to your  
5 admission there per day?

6 A. Okay.

7 Q. Is that a yes?

8 A. I told them that I was using different substances.

9 I can't recall how much of each item I told them  
10 I used. But I put myself there voluntarily. So there  
11 were addiction issues.

12 Q. Did you tell the clinicians at The Watershed that  
13 back in 2002 you were involved in a court case with your  
14 husband because your husband was going to court to get  
15 your children by claiming that you were incompetent?

16 MS. JOSEPH: Objection, your Honor.

17 THE COURT: Overruled.

18 A. I'm sorry.

19 You were asking me a question? Could you repeat  
20 that?

21 I'm sorry.

22 Q. Yes.

23 Did you tell the clinicians at The Watershed  
24 that your husband was trying to get your children by going  
25 to court claiming you were incompetent?

**Ramos - Cross/Flynn**

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1 A. My husband and I were in a court battle.

2 Yes.

3 Q. And he was going to court trying to get custody of  
4 your children by claiming you were incompetent.

5 Correct?

6 A. He was definitely fighting for custody of the kids.

7 Q. I'm asking you, was he claiming that you were  
8 incompetent?

9 A. I don't recall that.

10 Q. And you also told them at that admission that you had  
11 been using the cocaine on a daily basis for the seven  
12 months prior to your admission.

13 Correct?

14 A. I definitely was using a chem -- I was using  
15 different chemicals before I went there.

16 That's why I went there.

17 Q. And you told The Watershed personnel during your  
18 admission in 2002 that you had a history of anxiety for  
19 ten years.

20 Correct?

21 A. I have had anxiety issues.

22 Q. And you had a history of Vicodin dependence.

23 Correct?

24 A. That's correct.

25 Q. And you also told them you had a history of panic

**Ramos - Cross/Flynn**

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1 attacks.

2 Is that correct?

3 A. That's correct.

4 THE COURT: Of what?

5 MS. FLYNN: Panic attacks.

6 THE COURT: I still don't know what you said.

7 MS. FLYNN: Panic attacks.

8 THE COURT: Panic?

9 MS. FLYNN: Yes, your Honor.

10 BY MS. FLYNN:

11 Q. And you also told the personnel at The Watershed  
12 during your first admission in March of '02, that you had  
13 been sexually abused by your brother when you were a  
14 teenager.

15 Is that correct?

16 A. That's correct.

17 Q. And you also told them that you were the subject of  
18 physical and verbal abuse by your mother.

19 Correct?

20 A. Correct.

21 Q. And that your husband had physically abused both your  
22 children.

23 Is that correct?

24 A. I don't remember that.

25 Q. And then, Ms. Ramos, you were admitted again to

**Ramos - Cross/Flynn**

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1 The Watershed in October of 2002.

2 Correct?

3 A. I voluntarily entered there on two separate  
4 occasions.

5 I'm not -- I don't recall the third, but I  
6 certainly wouldn't deny it.

7 Q. Okay.

8 And is it fair to say that when you went there,  
9 you again went there because you had a cocaine addiction  
10 at that point?

11 MS. JOSEPH: Just to specify when, your Honor.

12 THE COURT: Overruled.

13 MS. FLYNN: I'll make it clearer.

14 BY MS. FLYNN:

15 Q. When you went to The Watershed on October 18, 2002  
16 for an admission, you advised them at that point that you  
17 were smoking \$7 to \$800 in cocaine a day.

18 Correct?

19 A. Okay.

20 Yes.

21 Q. Is that correct?

22 A. Okay.

23 Q. And you also informed them that you had just come out  
24 of South Oaks Hospital where you had been treated as a  
25 patient.

**Ramos - Cross/Flynn**

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1 Correct?

2 A. Correct.

3 Q. And by that admission in October of 2002, you had  
4 lost custody of your children.

5 Is that correct?

6 A. Correct.

7 Q. And, again, you mentioned the same complaints to the  
8 clinicians there about the sexual abuse by your brother,  
9 and the physical and verbal abuse by your mom.

10 Correct?

11 A. Correct.

12 Q. And you went for a third time to The Watershed and  
13 that was in July of 2005.

14 Correct?

15 A. Correct.

16 Q. And at that point you were snorting and --

17 MS. FLYNN: Withdrawn.

18 BY MS. FLYNN:

19 Q. You told them that you had been snorting and smoking  
20 cocaine daily for the previous seven months prior to your  
21 admission.

22 Correct?

23 A. Correct.

24 Q. And you also advised them that you were abusing  
25 Valium and Vicodin and Percocet.

**Ramos - Cross/Flynn**

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1 Correct?

2 A. Correct.

3 Q. And that was in July of 2005?

4 A. Okay.

5 Q. Did you also tell them that you were occasionally  
6 experiencing hallucinations?

7 A. I -- I really don't recall.

8 Q. Have you ever told any health care providers that you  
9 experience hallucinations?

10 A. Yes.

11 Q. And that was prior to December 29, 2005.

12 Correct?

13 A. Yes.

14 Q. When you were incarcerated at the Nassau County  
15 Correctional Facility prior to being transferred to  
16 Suffolk, you filed what's known as sick call requests.

17 Correct?

18 THE COURT: What?

19 MS. FLYNN: Sick call requests.

20 BY MS. FLYNN:

21 Q. Is that correct?

22 THE COURT: You have to keep your voice up.  
23 You are fading away.

24 MS. FLYNN: Sorry, Judge.

25 THE COURT: Now, you have no trouble hearing me,

**Ramos - Cross/Flynn**

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1 do you?

2 MS. FLYNN: No.

3 THE COURT: Nobody ever does.

4 BY MS. FLYNN:

5 Q. When you were at the Nassau County Correctional  
6 Facility prior to being transferred to Suffolk, you filed  
7 some sick call requests.

8 Correct?

9 A. Correct.

10 Q. And on October 19, 2005, you filed sick call requests  
11 because you were very depressed and you couldn't sleep.

12 Correct?

13 A. Correct.

14 Q. And on December 19, 2005, you filed another sick call  
15 request because you were depressed and you couldn't sleep.

16 Correct?

17 A. Correct.

18 Q. And on 12/21/05, before you went to Suffolk County,  
19 you filed another sick call request because you were  
20 depressed and hearing voices and couldn't sleep.

21 Is that correct?

22 A. Correct.

23 Q. Have you ever been diagnosed as being bipolar?

24 A. Yes.

25 Q. And you had an accident, car accident when you were

**Ramos - Cross/Flynn**

1155

1 26?

2 A. I was hit by a drunk driver.

3 I was a pedestrian. I was hit by a Bronco.

4 MS. FLYNN: Move to strike, your Honor.

5 THE COURT: You are moving to strike the answer  
6 as not responsive?

7 MS. FLYNN: Yes.

8 THE COURT: Motion granted. Strike the answer  
9 as nonresponsive.

10 The jury is instructed to disregard the answer.

11 BY MS. FLYNN:

12 Q. Yes or no, please.

13 You were in a car accident when you were 26?

14 A. Well, I wasn't in a car.

15 Q. Okay.

16 A. That's why I'm confused by your question.

17 Q. You are right.

18 You were a pedestrian who was hit by a car when  
19 you were 26?

20 A. Yes.

21 Q. And is it fair to say that the panic and the  
22 posttraumatic stress from that accident never stopped?

23 A. It would be fair to say that it didn't stop.

24 Q. Thank you.

25 MS. FLYNN: I have no other questions.



**Ramos - Redirect/Joseph**

1156

1 MS. JOSEPH: Just brief redirect, your Honor.

2 THE COURT: Surely.

3 REDIRECT EXAMINATION

4 BY MS. JOSEPH:

5 Q. On cross-examination, defense counsel asked you  
6 questions about the statement that you gave just after the  
7 incident.

8 She asked you whether you had made any statement  
9 regarding Gary Feinberg of putting his hand in your butt.

10 Reading from what's been already in evidence at  
11 Plaintiff Exhibit 49, I felt my pants elastic waistband  
12 pop. Then I felt his hot sweaty hand go into the crack of  
13 my ass.

14 Do you remember giving that -- making that  
15 statement right after the exam?

16 A. Yes.

17 Q. Right after the incident, I apologize.

18 A. Yes.

19 Q. Defense counsel also asked you, suggested that you  
20 made no mention of Mr. Feinberg grabbing your breast.

21 Reading again from the statement that you gave  
22 right after the incident, he then rolled me on my other  
23 side facing him. He put the stethoscope up my shirt while  
24 he squeezed my breast with his fingers on the same hand.

25 A. I remember that.

**Ramos - Redirect/Joseph**

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1 Q. Defense counsel asked you why you didn't say  
2 anything --

3 MS. JOSEPH: Withdrawn.

4 Let me rephrase.

5 BY MS. JOSEPH:

6 Q. After the incident you were transferred to Nassau by  
7 two female corrections officers and you didn't mention the  
8 Gary Feinberg assault to them.

9 Could you explain to the jury why you didn't say  
10 anything?

11 A. My thought was that I was going to see my judge.

12 We had been -- I had been with the same judge  
13 for two years. He knew me. I had a certain amount of  
14 trust for him, and I just figured I would tell the judge.

15 And when they said that I wasn't going to see  
16 the judge I panicked because I knew I was going to go back  
17 to the Suffolk County jail and he was going to be there.

18 So that's why at that time I had no other  
19 choice.

20 Q. And when you say you had no other choice, at that  
21 time who did you tell?

22 A. I told the COs that were getting ready to transport  
23 me back to Suffolk.

24 Q. And you admitted on cross-examination occasionally  
25 because of your mental condition you do at times

**Ramos - Redirect/Joseph**

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1 experience hallucinations.

2 The incident with Gary Feinberg, was that a  
3 hallucination?

4 A. There's no way I hallucinated that.

5 Q. Could you please tell the jury why that was not a  
6 hallucination.

7 A. On that day that I was in that room, I experienced  
8 something that -- a hallucination for something for me in  
9 the past was where I thought somebody said something about  
10 me or I thought somebody was talking about me. This  
11 wasn't about what I thought somebody was saying.

12 This was about somebody touching me and  
13 violating my body, because I was an inmate and thought I  
14 would be too afraid to say something.

15 This was somebody who left scars inside my  
16 vagina that took months and months to heal. This was not  
17 a -- I did not hallucinate this.

18 MS. JOSEPH: Thank you, Ms. Ramos.

19 MS. FLYNN: I move to strike, your Honor.

20 THE COURT: Motion denied.

21 MS. FLYNN: I have no other questions.

22 Thank you.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you, your Honor.

25 THE COURT: Please call your next witness.

**Ramos - Redirect/Joseph**

1159

1 MR. NORINSBERG: At this time, the plaintiff  
2 rests.

3 THE COURT: You want to come up, counsel.  
4 (Continued on next page.)

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**Ramos - Redirect/Joseph**

1160

1 (Sidebar.)

2 THE COURT: Are you putting on any witnesses?

3 MS. FLYNN: I'm going to now.

4 Yes, your Honor. I just have one witness. The  
5 sergeant's still here, right?

6 THE COURT: We can conclude that witness before  
7 4:45?

8 MS. FLYNN: I just have one witness who's here  
9 now.

10 But I'll have a witness tomorrow.

11 THE COURT: You have a witness tomorrow.

12 Okay.

13 MS. ZWILLING: Possibly two.

14 THE COURT: Then I'll take the motions now.

15 MR. NORINSBERG: I'd like to know who these  
16 witnesses are.

17 We have one witness listed. They listed them as  
18 a grievance coordinator.

19 MS. FLYNN: They are the two witnesses in  
20 rebuttal answering the two witnesses I didn't expect you  
21 were calling.

22 MR. NORINSBERG: Who are they so we know for the  
23 record?

24 MS. ZWILLING: I guess Mr. Langhorn and probably  
25 just someone to certify some records, a records custodian.

**Ramos - Redirect/Joseph**

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1 THE COURT: The question that I have now is, you  
2 don't have these witnesses here?

3 MS. FLYNN: No.

4 THE COURT: So we can't conclude today.

5 Otherwise, I was going to put the jury over  
6 until Monday, have the charge conference tomorrow, and  
7 then summations and charge on Monday.

8 Now I'm going to have to bring them back just  
9 for a short time. You can't do it this afternoon, right?

10 MS. ZWILLING: We have to pull records, Judge.  
11 It's in response to the completely unexpected  
12 testimony.

13 THE COURT: The witnesses aren't here?

14 MS. ZWILLING: The witnesses aren't here, and  
15 they have to gather the records.

16 MS. FLYNN: One record.

17 THE COURT: Then I'm going to excuse the jury  
18 until tomorrow at 9:30.

19 We'll hear motions today.

20 MS. FLYNN: All right.

21 THE COURT: And we'll have to excuse the jury  
22 early tomorrow and then go over the charge tomorrow.

23 I didn't want to bring them back just for an  
24 hour.

25 MS. FLYNN: I know.

**Ramos - Redirect/Joseph**

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1 THE COURT: But I have no choice.  
2 You cannot go ahead with it today?  
3 MS. FLYNN: No.  
4 I don't have the witnesses.  
5 THE COURT: All right.  
6 MS. ZWILLING: Thank you, Judge.  
7 (Sidebar concluded.)  
8 (Continued on next page.)

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**Ramos - Redirect/Joseph**

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1 (In open court.)

2 THE COURT: Members of the jury, the plaintiff  
3 has rested.

4 I am advised that the defendants may have one or  
5 two witnesses. They are not prepared to go ahead this  
6 afternoon. I am going to have to go over certain law with  
7 the lawyers right now.

8 So we are going to have to recess now until  
9 tomorrow morning at 9:30. It probably will be a very  
10 short day tomorrow. Sorry about that. But I have no  
11 choice other than to bring you back.

12 What will happen, when both sides rest, I will  
13 have to go over the law with the lawyers, the law that I'm  
14 going to give you in my instructions. That takes a number  
15 of hours. So you will be excused early tomorrow.

16 You will go over until Monday. Monday is the  
17 22nd -- no, 23rd. Monday is the 23rd. So on Monday, we  
18 will have summations and there will be three. The  
19 plaintiff will have the first main closing argument,  
20 followed by the defendant's only closing argument, and a  
21 brief rebuttal by the plaintiff.

22 And then, if there's time, I will start my  
23 instructions. They will take a number of hours, and I  
24 will go over my charge and the verdict sheet and then you  
25 will start your deliberations.



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1           You will deliberate until 4:45 because we have  
2   to leave at that time because one of you takes public  
3   transportation. However, if you want to stay later, you  
4   simply send me a note through your foreperson whom you  
5   will select, and I will stay later.

6           Otherwise, if you don't reach a verdict by  
7   Monday, come back on Tuesday morning at 9:30 and start all  
8   over again. You will be under no time constraints  
9   whatsoever. Take all the time you need. That's when you  
10   start talking for the first time about the case.

11           We will, of course, continue to supply lunch at  
12   the expense of the United States District Court. I hope  
13   lunch has been satisfactory. If not, try something else.  
14   Anything you want, you can order.

15           So now we are going to recess until tomorrow  
16   morning at 9:30. As I said, it will probably be a short  
17   day. In the mean time, please don't discuss the case with  
18   anybody, either among yourselves or with anybody else.  
19   Don't read Newsday or watch Channel 12. By this time, you  
20   must have piled up Newsday up to the ceiling.

21           We will recess until 9:30. Have a nice evening.  
22           (Jury leaves the courtroom.)

23

24           THE COURT: Motions at the end of the  
25   plaintiff's case.

1 MS. ZWILLING: Your Honor, I'm ready to proceed  
2 on behalf of the defendants if plaintiffs are not making  
3 any motions at this time.

4 THE COURT: Pardon?

5 MS. ZWILLING: I'm ready to proceed on behalf of  
6 the defendant if the plaintiff is not making a motion at  
7 this time.

8 THE COURT: I don't hear the plaintiffs making  
9 any motions.

10 MR. NORINSBERG: This case is full of factual  
11 issues that the court had identified in denying summary  
12 judgment.

13 Those factual issues clearly must be resolved by  
14 the jury. I don't see any basis in law whatsoever for  
15 their even making this application, but I do not  
16 affirmatively have an application to make because I don't  
17 believe these are legal issues in this case.

18 These are factual issues and it's up to the jury  
19 to decide those issues.

20 THE COURT: Does the defense want to make any  
21 motions?

22 MS. ZWILLING: Yes, Judge.

23 THE COURT: Go ahead.

24 MS. ZWILLING: Your Honor, perhaps the best way  
25 to go about this is to begin with the procedural defense.

1 THE COURT: To begin with what?

2 MS. ZWILLING: The procedural type defense.

3 The defendant's first motion here would be to  
4 dismiss the entire case for the plaintiff's failure to  
5 comply with 42 USC, Section 1997, commonly known as the  
6 Prisoner Litigation Reform Act prior to instituting this  
7 action.

8 The PLRA, as it's commonly called, requires all  
9 prisoners to file a formal grievance with respect to any  
10 complaints about jail incidents or conditions prior to  
11 bringing an action. And the plaintiff did not file any  
12 grievance with respect to this matter prior to bringing  
13 the action. The PLRA applies to virtually every  
14 conceivable type of claim a prisoner may make, including  
15 such things as excessive force and alleged sexual abuse.

16 It is not satisfied by the informal making of  
17 complaints, and the courts have held that among the  
18 informal types of complaints that do not satisfy the PLRA  
19 as a matter of law, are such complaints as complaints to  
20 internal affairs, or to the sheriff or to the warden.

21 As a matter of law, none of those informal type  
22 complaints satisfy the PLRA. Only a formal grievance  
23 does. And, again, no formal grievance was filed by the  
24 plaintiff regarding this incident, either at the  
25 Suffolk County facility or at the Nassau County facility,

1 when she returned there.

2 The PLRA applies even when the inmate has left  
3 custody. They still must comply before bringing the  
4 lawsuit. The two cases which we rely on for that  
5 proposition are **Sharif v Coombe**.

6 THE COURT: I don't know how to spell either one  
7 of those names.

8 MS. ZWILLING: I will be glad to spell them for  
9 the court, Judge.

10 THE COURT: It would be different if you said  
11 DiMaggio v Gehrig. I would know how to spell that.

12 But I don't know how to spell this.

13 MS. ZWILLING: Sharif is S-H-A-R-I-F-F v Coombe,  
14 C-O-O-M-B-E.

15 The citation for that is 2009 WL, for Westlaw,  
16 243941. We are also relying on the case of **Finger, common**  
17 **spelling, v McFinnis**, M-C-F-I-N-N-I-S. The citation for  
18 that case is 2004 WL, again for Westlaw, 1367506. And we  
19 are also relying on the case of **Macias, M-A-C-I-A-S v**  
20 **Zenk**, Z-E-N-K, citation is 495 F.3d, 37.

21 And **Macias** stands for the proposition, as held  
22 by the Second Circuit, that the PLRA is not satisfied by  
23 the filing of informal grievances. It must be the  
24 completion of not only an actual grievance form, but the  
25 plaintiff must have followed it through all levels of

1 appeal, if that grievance is denied, in order to satisfy  
2 the administrative remedies available prior to the  
3 bringing of the lawsuit.

4 Again, Judge, plaintiff here filed no grievance.  
5 Regardless of how we may feel about the facts of the case,  
6 her failure to do so is a complete defense, a complete  
7 obstacle to her bringing this action.

8 That would be our first motion.

9 THE COURT: What about that?

10 MR. NORINSBERG: I would just note initially  
11 they moved for summary judgment.

12 They never once raised this issue, and the  
13 reason they never raised it is because it has no  
14 application to a 1983 case such as this. If they had any  
15 legitimate basis for getting this dismissed on that  
16 ground, one would assume that that would have been part of  
17 the original motion. It was not.

18 A complaint was filed -- this wasn't a formal  
19 grievance. It was a sworn complaint through the Nassau  
20 County Sheriff's Office directed to Suffolk County. An  
21 internal affairs investigation was conducted and it was  
22 substantiated. I don't know what more procedural devices  
23 the plaintiff could have availed herself of.

24 There were criminal charges instituted also  
25 which would have been pursued, but for the fact that

1 Mr. Feinberg took his own life.

2 So I think that this is really a completely  
3 baseless argument. It has no application, whatsoever.  
4 The county knows it has no application. That's why they  
5 never made this argument before.

6 And I would just ask the court to reject this  
7 argument out of hand.

8 MS. ZWILLING: Judge, the plaintiff has known  
9 about our defense since the very beginning of the case.

10 The first affirmative defense stated in our  
11 answer that this inmate claim is barred by the provisions  
12 of 42 USC, Section 1997 in our answer.

13 Moreover, Judge, the PLRA is not, strictly  
14 speaking, an affirmative defense to be established by the  
15 defendant in defense. It is a condition precedent to  
16 suit, much like a notice of claim, the satisfaction of  
17 which the plaintiff must prove in order to proceed with  
18 the action.

19 Counsel's contention that it does not apply to  
20 Section 1983 cases is patently incorrect. The  
21 Supreme Court, itself, has repeatedly applied it to  
22 Section 1983 cases, and the Second Circuit has held, and  
23 we have litigated this issue there, that informal  
24 complaints, specifically such things as reports to  
25 internal affairs, or reports of a crime to the district

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1 attorney, do not suffice to satisfy the PLRA.

2 If the jail has a formal grievance procedure and  
3 we all know that this one does because we have had chapter  
4 and verse about the procedure, the inmate must pick up  
5 that form, fill out their grievance on that form, submit  
6 the grievance and, if it is denied, appeal it and keep on  
7 appealing it until they have exhausted all remedies.

8 The plaintiff here has not filed a grievance.  
9 Counsel does not suggest otherwise. Their only contrary  
10 argument is that there was an internal affairs  
11 investigation. There were criminal charges.

12 Judge, those sorts of things do not suffice  
13 under the PLRA.

14 THE COURT: I, frankly, have to look at the  
15 cases you have cited. I'm not familiar with them.

16 So at this point I'm going to reserve decision.

17 MS. ZWILLING: Judge, with respect to our PLRA  
18 defense, if the court permits us, we may also be -- would  
19 like to submit some additional authority.

20 THE COURT: Sure.

21 MS. ZWILLING: I'll continue, if I may, with the  
22 remainder of our motions.

23 We have motions -- a motion to dismiss for  
24 failure to establish a prima facie case, and basically  
25 there are three categories of these and I can deal with

1       them sequentially.

2               The first of these is that the plaintiff has  
3       failed to prove a prima facie case of a constitutional  
4       violation. The first reason we submit that she has -- I'm  
5       sorry, your Honor?

6               I thought you said something, Judge.

7               THE COURT: No, I didn't.

8               MS. ZWILLING: Our first basis is that we  
9       believe that the plaintiff has not made out a prima facie  
10      case that she was sexually abused.

11              THE COURT: Just one minute.

12              MS. ZWILLING: Sure.

13              (Whereupon, there was a pause in the  
14      proceedings.)

15

16              THE COURT: You may proceed.

17              MS. JOSEPH: Thank you, your Honor.

18              As I said, the first basis that we contend that  
19      the plaintiff failed to prove a prima facie case is that  
20      we cannot believe she has adduced sufficient evidence that  
21      she was sexually abused by Gary Feinberg to get to the  
22      jury.

23              That is our first application, Judge.

24              THE COURT: That she didn't prove she was  
25      sexually abused?



1 MS. ZWILLING: That she didn't prove sufficient  
2 evidence that she was.

3 MR. NORINSBERG: Your Honor, we just heard  
4 testimony from Ms. Ramos that Mr. Feinberg inserted  
5 fingers into her vagina, inserted fingers into her rectum,  
6 grabbed her breast, grinded an erection into her hand.

7 What else would we have to show to establish a  
8 sexual assault? I don't think that is a legitimate  
9 argument to make.

10 THE COURT: That motion is denied.

11 MS. ZWILLING: The next motion to dismiss for  
12 failure to prove a prima facie case is that plaintiff did  
13 not submit any evidence that Gary Feinberg acted under  
14 color of law, which, as we know, is an essential element  
15 for a claim of a constitutional violation under  
16 Section 1983.

17 To act under color of law, Judge, and I think  
18 this goes without saying, is that a plaintiff has to show  
19 that the act to which she was subjected was made possible  
20 only by virtue of the violator's position, and that may be  
21 the case where there is sexual contact and the alleged  
22 violator is a jailer or a police officer or a correction  
23 officer because, in that case, there is an inherent power  
24 and balance between the alleged victim and the alleged  
25 abuser. And the alleged abuser is the jailer. He's the

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1 person who holds the keys to that individual's freedom.

2 We respectfully submit, Judge, that that is not  
3 the case with a medical provider. And in that regard I  
4 point out that we have done quite a bit of research on  
5 this and we haven't been able to locate any situation  
6 where this case -- where the issue of whether or not a  
7 medical provider's act of alleged sexual abuse are or are  
8 not taken under color of law.

9 And, for that reason, I do wish to point out,  
10 although it's parenthetical, that if Gary Feinberg were in  
11 this courtroom and were he the defendant, he would  
12 probably be entitled to qualified immunity on that basis.

13 But just to bring it back, Judge, it is our  
14 position that where a medical provider engages in  
15 impermissible sexual conduct, a medical provider who, as  
16 we know, carries no baton or no weapon, that act,  
17 regrettable as it may be, reprehensible as it may be, and  
18 even, possibly, tortious under state law and criminal, is  
19 simply not an action taken under color of law for  
20 Section 1983 purposes.

21 As I said, for color of law to exist, the action  
22 has to be made possible by the wrongdoer's position. I  
23 assume the plaintiff's comeback is going to be, well,  
24 that's what placed Gary Feinberg in physical proximity to  
25 the plaintiff.

1 But, clearly, color of law requires more than  
2 physical proximity. We know that if the janitor in the  
3 jail had assaulted an inmate, he's not acting under color  
4 of law. The truck driver from the department of public  
5 works kidnaps a child while he's driving along his route  
6 some day, he's not acting under color of law, even if he  
7 would not have been -- had not encountered the child had  
8 he not been working at that point.

9 It requires something more than proximity. It  
10 requires the creation of some sort of relationship between  
11 the plaintiff and the alleged abuser that makes the action  
12 possible. And we submit that where the alleged abuser is  
13 a medical provider, there is no such relationship and no  
14 color of law for that reason.

15 MR. NORINSBERG: Your Honor, the Second Circuit  
16 stated, unequivocally, that a jail has an affirmative duty  
17 to protect inmates in its custody.

18 Our claim is against the municipality,  
19 County of Suffolk, for knowing about this particular  
20 employee, for having five different complaints made before  
21 the incident, and for failing to properly respond to it.

22 There's no question that this satisfies the  
23 elements of 1983 in every respect. The argument that  
24 counsel's making, if it would be applicable at all, would  
25 be applicable only to Mr. Feinberg if he were being sued

1 under 1983 in his individual capacity.

2 But even if that were the case, which it's not,  
3 even if that were the case, I don't think there's any  
4 question that he would be operating under authority and  
5 color of law, given the extent that he's operating in a  
6 law enforcement environment, a jail, a correctional  
7 facility, with supervision by jail employees, working  
8 under that rubric.

9 I think there's no question that that would  
10 satisfy a color of law, and what's telling about the  
11 argument made by defense counsel is they acknowledge they  
12 haven't found any case law on this at all because it's an  
13 argument, to me, that's completely counter to common sense  
14 and logic in a jail setting.

15 MS. ZWILLING: Judge, it may be contrary to  
16 common sense in Mr. Norinsberg's view, but there can be no  
17 Monell liability absent an underlying constitutional  
18 violation.

19 There is but one single constitutional violation  
20 alleged in the complaint, and there has been one single  
21 violation tried before this court, and that alleged  
22 violation is the asserted abuse by Gary Feinberg. If that  
23 constitutional violation could not have been said to occur  
24 because Mr. Feinberg's actions were not under color of  
25 law, then there can be no Monell liability.

1                   And, again, there may be some state law duty to  
2     protect, what have you, but there can be no Monell  
3     liability where there is no violation of a constitutional  
4     right carried out under color of law.

5                   THE COURT: The court finds that the actions of  
6     Gary Feinberg were under color of law.

7                   He was the physician's assistant at the  
8     Suffolk County Correctional Facility medical unit. The  
9     inmates had to be examined by him. He was working under  
10    his power and authority in accordance with his job. It's  
11    absolutely under color of law in my view.

12                  And your inference that if he was individually  
13    sued he might be entitled to qualified immunity I take  
14    great umbrage at that. If ever there was a violation of  
15    clearly established rights, it's by a doctor violating a  
16    patient. His Hippocratic oath and the equivalent of a  
17    physician's assistant prohibits anything like that, in  
18    addition to violating the law and the criminal law and the  
19    code of decency.

20                  So your motion to dismiss because Gary Feinberg  
21    didn't act under color of law is denied.

22                  MS. ZWILLING: And, Judge, for the record, I'm  
23    not suggesting that his actions, if they occurred, were  
24    anything but indecent and unethical and immoral.

25                  THE COURT: Okay.

1 MS. ZWILLING: Judge, the next category of our  
2 motions is, based on the notion that the plaintiff has  
3 shown no evidence of a causal link between any asserted  
4 Monell policy and the alleged constitutional violation  
5 being Gary Feinberg's sexual abuse.

6 Rather than waste a lot of time arguing why the  
7 plaintiff didn't show various policies, and since they  
8 have never told us what their Monell policy is, I would  
9 think that we would all appreciate it if at this point the  
10 plaintiff tells us what their Monell policy is, so that I  
11 can limit my motions to why we believe they have not given  
12 prima facie evidence as to the policy they intend to ask  
13 the jury find.

14 MR. NORINSBERG: It seems to me we have been  
15 having this discussion over and over again.

16 Regardless of how many times I state on the  
17 record what our claims are, it doesn't seem to resonate  
18 with the defendants. However, I'll state it again.

19 We have two principal Monell claims. One is a  
20 failure to train. Specifically, the failure to train the  
21 employees in the jail facility how to properly respond to  
22 complaints of sexual abuse by inmates.

23 It's our contention that if they had been  
24 properly trained about their duties and responsibilities,  
25 that everyone, starting from Carol Manderino, to Nancy

1     Kugler, to Sergeant Lundquist, to Investigator Olivencia,  
2     to Ms. McCarrick --

3             THE COURT: To slow down.

4             MR. NORINSBERG: All of the individuals that  
5     Ms. --

6             THE COURT: Did you ever hear of that correction  
7     officer, slow down?

8             MR. NORINSBERG: We'll slow down.

9             All of the individuals that were notified of  
10    Mr. Feinberg's misconduct but failed to take any action,  
11    all of them testified that they had received no training,  
12    whatsoever, regarding how to respond to a complaint of a  
13    sexual assault by a staff member.

14            Not only did they say that they had no training,  
15    they also said that there were no written guidelines,  
16    whatsoever, as to how to respond to this situation, or how  
17    to handle this situation. They couldn't even determine  
18    what would be the proper form to use to report this type  
19    of an allegation.

20            So our position is, so it's crystal clear on the  
21    record, that there was a deficiency, a gross deficiency in  
22    training, and that training was -- that failure to train  
23    was directly responsible for the -- this assault happening  
24    on Ms. Ramos. Because if this incident had been properly  
25    investigated and reported on the five previous occasions

1 prior to Ms. Ramos, then this clearly would have resulted  
2 in Mr. Feinberg being removed from that position, and he  
3 wouldn't have been allowed to have any contact with female  
4 inmates.

5 So that's our first claim. It's failure to  
6 train.

7 Our second claim is deliberate indifference to  
8 claims made by women inmates regarding sexual abuse. And  
9 this is an umbrella category. It includes the failure to  
10 respond which I had talked about earlier.

11 But it also includes a general disregard of  
12 complaints that are being made by these women inmates. We  
13 submitted evidence, first in the form of Ms. Rickenbacker,  
14 that multiple times there were complaints made, there was  
15 a complete disregard, no response, whatsoever, to any of  
16 these complaints.

17 But we didn't just show Ms. Rickenbacker in this  
18 case. We showed that with Ms. Ramos and her complaint  
19 there was absolutely no meaningful investigation taken of  
20 this. The investigator said that he didn't feel the need  
21 to investigate or speak to Mr. Feinberg.

22 He did absolutely nothing about this. He didn't  
23 speak to Ms. Ramos. He didn't interview Mr. Feinberg. He  
24 didn't do anything on this case until February 3rd when a  
25 civilian from the outside called and made a complaint



1 about a second inmate and then all of a sudden he finally  
2 took some action and interviewed inmates.

3 But the record will reflect that for the six  
4 weeks or so he was doing this investigation, he literally  
5 did nothing in terms of finding out what actually  
6 happened.

7 The third instance and the third evidentiary  
8 basis in support of our claim is that the post-incident  
9 evidence which the court admitted with respect to  
10 Ms. Kennedy's claim, Ms. Kennedy complained to five  
11 different employees at the jail. She brought this to the  
12 attention of people in security. She brought it to the  
13 attention of people in the medical staff.

14 And we know what happened in the aftermath of  
15 this complaint. It made its way up to Dr. Geraci, the  
16 head of the medical unit, and Ms. Kugler. They had a  
17 meeting on January 20th, 2006.

18 And what did they decide to do? Absolutely  
19 nothing, nothing.

20 (Continued on next page.)

21

22

23

24

25

1 MR. NORINSBERG: (Continuing.)

2 They didn't report this to Internal Affairs.

3 They didn't report it to internal security. They didn't  
4 report it to the Sheriff's department. They did  
5 absolutely nothing.

6 And the only time that this came into being, the  
7 only reason why all of this came out, was finally when  
8 there's a second allegation made and when Internal Affairs  
9 learns of the second allegation and the interviews were  
10 done on February 6th, that's what finally led to this  
11 arrest of Gary Feinberg.

12 But the people in the jail medical unit did  
13 nothing in response to these claims of -- whatsoever.

14 So it's our position that these three different  
15 scenarios, first, Ms. Rickenbacker's complaints; second,  
16 Ms. Ramos complaint; third, Ms. Kennedy's complaint, that  
17 these are three different pieces or components of our  
18 claim that support an inference that there was an  
19 unwritten policy of disregarding inmate complaints  
20 regarding sexual assaults by staff members.

21 MS. ZWILLING: Judge, first of all, this case  
22 hinges on what the county could have done prior to the  
23 alleged sexual assault of Ms. Ramos.

24 What happened subsequently may conceivably be  
25 some evidence of a policy existing before. But unless

1 plaintiff proves that a policy in place at the time of the  
2 alleged attack was the moving force behind that attack,  
3 what the County did or didn't do afterward is not a basis  
4 upon which the plaintiff can urge the jury to impose  
5 liability on the County.

6 And the reason I asked Mr. Norinsberg what his  
7 Monell policy is is because he keeps mixing apples and  
8 oranges together and I'd like to separate that for the  
9 Court.

10 We know he has this failure to train policy.  
11 Then he talks about the County is liable for being  
12 deliberately indifferent.

13 Well, Judge, the County can only be liable for a  
14 policy or custom undertaken with a certain state of mind.  
15 There is no such basis of a Monell liability for  
16 deliberate indifference. Deliberate indifference refers  
17 not to the policy, but to the state of mind. Deliberate  
18 indifference is a state of mind and that state of mind  
19 must generate the policy.

20 In other words, if the County acted deliberately  
21 indifferent and negligently or even recklessly, if it  
22 wasn't so active in the execution of a policy, that's  
23 irrelevant.

24 So perhaps he has a failure to train claim here,  
25 but there's no claim that the County was deliberately

1 indifferent. They can be deliberately indifferent and  
2 having a policy but they have to have a policy. There's  
3 no separate cause of action for deliberate indifference.

4 Now, with respect to the alleged failures to  
5 accept complaints and respond to them, this is to some  
6 extent mutually inconsistent.

7 The plaintiff can't argue that they didn't take  
8 the complaints and didn't investigate them. Because if  
9 they didn't take them, of course they can't investigate.  
10 Which in no way excuses the failure to investigate, but  
11 they both can't be possible. It's one or the other.

12 Now, our first -- the first theory upon which we  
13 believe the plaintiff has failed to demonstrate a causal  
14 link between the asserted policy and the constitutional  
15 violation, I would suggest the Court look to City of  
16 Canton v. Harris, which is 109 SCT 1197, which is probably  
17 the single-most important case that sets out the  
18 parameters of a failure to train and failure to supervise  
19 claim.

20 And Canton says that the first input, the very  
21 first thing the Court needs to look at in determining  
22 whether the plaintiff has made out a claim of a failure to  
23 supervise is, A, in the Supreme Court's words, direct  
24 causal link between the policy and the alleged  
25 constitutional violation.

1           Not some possible cause and effect relationship.  
2       Not a derivative second cause. But a direct causal link,  
3       the very moving force connection between the policy and  
4       the constitutional violation that Monell speaks of.

5           Now, we first contend that the alleged causal  
6       link is deficient here on legal grounds, purely legal  
7       grounds. We know that there's no respondeat superior with  
8       liability of a municipality under Section 1983. And  
9       Monell's liability is limited to certain specified  
10      policies.

11           Now, City of Canton and the cases that interpret  
12      it have permitted the imposition of liability for a  
13      municipality's failure to train or supervise the employee  
14      who commits the constitutional violation. That's not what  
15      the plaintiff seeks to do here.

16           The plaintiff is not alleging that the County  
17      failed to train or supervise Gary Feinberg. And again, it  
18      is the sexual abuse by Gary Feinberg that is the only  
19      constitutional violation which plaintiff chose to allege  
20      in the complaint and the only constitutional violation  
21      that the plaintiff chose to present to this jury.

22           And that is extremely significant, Judge,  
23      because we don't believe that the courts permit the  
24      imposition of Monell liability in the manner plaintiff  
25      seeks to impose it here.

1           The plaintiff here is not alleging that the  
2   County failed to train or supervise the person who  
3   committed the constitutional violation which would be a  
4   direct causal link. They are presenting this heretofore  
5   unheard of theory that as a result of the county's alleged  
6   failure to train and supervise other persons, their  
7   insufficiencies caused a third person to commit a  
8   constitutional violation. No direct causal link, Judge.  
9   A secondary, speculative link at best and from a factual  
10   sense and one that has not been permitted by the courts.

11           The courts again permit the imposition of  
12   liability for failing to properly manage the  
13   constitutional violator. There is no basis upon which the  
14   Court should extend itself to hold out there can be  
15   liability for failure to train certain employees who as a  
16   result of their actions may be said to have caused someone  
17   else to violate the constitutional right.

18           And in that regard, I would draw the Court's  
19   attention to some language from City of Canton, which I  
20   think is very illustrative with respect to indirect  
21   attenuated change of causation. In a footnote, footnote  
22   nine, the Court quotes the Supreme Court's decision --

23           THE COURT: Footnotes? I don't accept  
24   footnotes.

25           MS. ZWILLING: Not even the Supreme Court's,

1 Judge?

2 THE COURT: You know what I think of footnotes,  
3 don't you?

4 MS. ZWILLING: Understood, Judge.

5 THE COURT: You know about that, right?

6 MS. ZWILLING: I do, Judge. I'm familiar with  
7 your rule. Let's forget the footnote.

8 THE COURT: Very disturbing, footnotes. Here  
9 you're reading, everything is fine and all of a sudden you  
10 see this -- first of all, most of the time I can't even  
11 see the number, then I have to go from the reading, which  
12 you know takes some concentration, and then go underneath  
13 near the bottom of the page, interrupt my line of thought?  
14 No way.

15 MS. ZWILLING: Okay, Judge.

16 Aside from the footnote, they are quoting the  
17 Supreme Court's earlier decision in the Tuttle, T-U-T-L-E,  
18 case, and I'm just looking through this now to find the  
19 citation, it's Oklahoma City v. Tuttle, which is 105  
20 Supreme Court 2427.

21 And the Supreme Court observed there with  
22 respect to attenuated and secondary claims of causation,  
23 "obviously if one retreats far enough from a  
24 constitutional violation, some municipal policy can be  
25 identified behind almost any harm inflicted by a municipal

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1 official. For example, a police officer would never have  
2 killed Tuttle if Oklahoma City did not have a policy of  
3 establishing a police force. But Monell must be taken to  
4 require proof of a city policy different in kind from this  
5 latter example before a claim can be sent to a jury on the  
6 theory that a particular violation was caused by the  
7 municipal policy."

8 What this makes clear, Judge, is that again the  
9 causal link, as said by the Supreme Court in Canton, must  
10 be a direct causal link. There is no authority upon which  
11 the Court can impose liability on the theory urged by the  
12 plaintiff, which is that the County's failure to train and  
13 supervise certain officials caused another person to  
14 commit a constitutional violation.

15 MR. NORINSBERG: We are operating in this  
16 courtroom under a Second Circuit case law authority that's  
17 directly on point and I stated this a few times, I want to  
18 just quote the Villante case for the record, because  
19 clearly the legal framework set out by the Second Circuit  
20 is the framework --

21 THE COURT: What case is that?

22 MR. NORINSBERG: Villante versus Department  
23 of --

24 THE COURT: How do you spell it?

25 MR. NORINSBERG: V-I-L-L-A-N-T-E, versus the



1 Department of Corrections of the City of New York, 786  
2 F. 2d (516) Second Circuit 1986.

3 It says, "the behavior of subordinate prison  
4 officials may evidence a failure to train or supervise  
5 sufficiently egregious to amount to gross negligence or  
6 deliberate indifference on the part of their superiors and  
7 the municipality." That's at page 519.

8 The same page says, "municipalities have an  
9 affirmative duty to protect those held in their custody.  
10 Therefore, liability may be based on the grossly negligent  
11 or deliberately indifferent failure of custodial officers  
12 to protect an inmate."

13 That's precisely what we're arguing here,  
14 your Honor. We're arguing that the multiple opportunities  
15 where the defendant's employees knew about the complaints  
16 about Gary Feinberg and did nothing violate the  
17 obligations of the affirmative duty that the Second  
18 Circuit recognized, and I will add parenthetically that at  
19 least two of the people that knew beforehand were clearly  
20 high level supervisors. Ms. Kugler was a supervisor of  
21 nine different people mental health unit. Sergeant  
22 Lundquist was the commanding officer in the gang  
23 intelligent unit and was part of internal security  
24 himself. So I feel that the arguments that are being made  
25 are being made in the abstract.

1           The actual factual context within which we're  
2     operating within directly follows the roadmap laid out by  
3     the Second Circuit and that's how we started this case.  
4     That's been the theory all along. That was the basis why  
5     the Court denied summary judgment and said this must go to  
6     the jury. That was the evidence we presented during the  
7     trial consistent with that ruling and that's what the jury  
8     is clearly going to decide.

9           So I feel like we are clearly within the legal  
10    framework that's been set out by the Second Circuit and in  
11    the multiple other cases that I have cited and that I have  
12    in my requests to charge that stand for the same  
13    proposition.

14           So I respectfully ask the Court to deny that  
15    motion out of hand as well.

16           MS. ZWILLING: Judge, Villante, which was  
17    decided in 1986, has not been the law since the Supreme  
18    Court's 1989 decision in Canton which sets out the  
19    framework for a failure to train, a failure to supervise  
20    claim.

21           It's the Supreme Court's 1989 decision that  
22    controls, not the Second Circuit's earlier decision.

23           And with respect to the plaintiff's reference of  
24    people being supervisors here, there's no municipal  
25    liability based on the acts the supervisors. Policy

1 makers, yes, but even the plaintiff is not urging that  
2 they are a policy maker. In any event, Judge, that, to  
3 sum up, is one of the bases of our motion that liability  
4 under Monell cannot be premised on a failure to train  
5 employees who supposedly caused a different employee to  
6 commit a constitutional violation.

7 THE COURT: Well, this case presents such clear  
8 Monell liability, I have rarely seen anything like it.

9 First of all, the policy, custom and practice of  
10 the Suffolk County correctional facility and the Suffolk  
11 County Sheriff's department, which reaches all the way up  
12 to the sheriff mentioned in this case, the sheriff's  
13 assistant, who are policy makers, is not to investigate  
14 inmate -- female inmates' complaints.

15 The policy, the custom, the practice of the  
16 Suffolk County correctional facility, the Suffolk County  
17 Sheriff's department, the sheriff and the assistant to the  
18 sheriff is not to investigate female inmates' complaints  
19 of sexual misconduct by probably anybody, but certainly  
20 this physician's assistant.

21 I was listening carefully. I don't know if  
22 anybody even questioned this man. They just paid no  
23 attention. Not only pay no attention, but there's  
24 evidence they called them names when they make complaints.

25 So there's a policy that the plaintiff has

1 attempted to prove of no investigation of female inmates'  
2 complaints in the Suffolk County correctional facility.

3 The evidence is clear about that. The  
4 complaints prior to the situation with Rochelle Ramos of  
5 other people being sexually abused and nothing being done  
6 is also clear.

7 The reports were made to the jail health clinic  
8 administrator, the medical unit administrator, Dr. Geraci.  
9 He's in charge. He's a policy maker. Also to the  
10 administrator of the health clinic, I believe that was --  
11 the deputy administrator was Rick Kaufman or his superior,  
12 David Bloomberg. Everybody was told about these things.  
13 There were never any rules or guidelines of any kind to  
14 handle this situation.

15 No regulations when Dr. Geraci was told about  
16 this. He didn't ask either Sergeant Campo or Lieutenant  
17 Nolan to investigate the matter. Just leave it alone,  
18 that's all. It will go away.

19 Richard Kaufman, who was the Suffolk County  
20 Department of Health clinic coordinator, he had no  
21 training, he said. It was not his responsibility to do  
22 anything, he said.

23 Carol Manderino, the psychiatric social worker  
24 for the Suffolk County Department of Health at the  
25 facility, was never trained to notify a superior if an

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1 inmate claimed sexual abuse. She said so. I was never  
2 trained to do anything about that. Slipshod.

3 James Wright, the deputy sheriff investigator  
4 for Suffolk County sheriff's office, never even  
5 interviewed Gary Feinberg at all. He never asked what  
6 happened. He never went to the jail medical unit, even  
7 though Internal Affairs apparently made a conclusion that  
8 Ms. Ramos' allegations were founded. And he testified  
9 that the sheriff himself, here we have the top policy  
10 maker, the sheriff himself wanted an investigation by CIB.

11 Investigator Robert Starke, a deputy sheriff,  
12 said that Sheriff DiMarco told him to take over the  
13 investigation. So the top policy maker again is in this.

14 MS. ZWILLING: Judge, I think we're --

15 THE COURT: Please don't interrupt.

16 MS. ZWILLING: I'm sorry, your Honor. I thought  
17 that you were finished.

18 THE COURT: And then the pastor Roy Kurtin you  
19 heard today, called Butch Langhorn, the assistant to  
20 Sheriff DiMarco, and told him about this.

21 So that's the first cause of action in my view.  
22 It's a Monell policy, custom and practice not to  
23 interview, not to investigate inmates' allegations of  
24 sexual abuse.

25 The second, of course, is training. There's a

1 total lack of training. Shouldn't they have said, you got  
2 to be very careful. We know these inmates can say all  
3 kinds of crazy things, but when they say they've been  
4 sexually abused by a doctor or a doctor's assistant,  
5 you've got to go into that, because they're at the mercy  
6 of a doctor or a doctor's assistant. They're in a very  
7 exposed, tenuous position, and subject to that.

8 So I think there's two causes of action. The  
9 plaintiff has made out a prima facie case of, one, Monell  
10 policy, practice, custom not to investigate female  
11 inmates. And two, lack of training on that subject, which  
12 a jury could find because of the previous complaints that  
13 led to this act of sexual abuse against Ms. Ramos.

14 Therefore, I'm denying.

15 You wanted to say something else?

16 MS. ZWILLING: Yes, Judge. I thank your Honor  
17 for parsing out the two different claims there, because I  
18 think the plaintiff has intentionally tried to slough them  
19 together.

20 There is a possible complaint of a failure to  
21 investigate and also there's the claim of failure to  
22 train.

23 The standards for the two of those claims are  
24 entirely different.

25 On failure to investigate claim, the plaintiff

1 needs to show that there was a widespread practice of  
2 ignoring claims. On a failure to train claim, they have  
3 to focus on deficiencies in the training program. They  
4 can't slough a little from column A and column B together  
5 and make a pile high enough. They've got to prove the  
6 entirety of either one of those claims.

7 My motion, Judge, or the last aspect of it was  
8 only this, that there is no authority for the imposition  
9 of Monell liability for the failure to train anyone other  
10 than the constitutional violator. There is no authority  
11 upon which Monell liability may be imposed for a  
12 derivative failure to train.

13 THE COURT: Have you concluded your argument?

14 MS. ZWILLING: I have concluded that aspect.

15 THE COURT: Your Rule 50 motion for judgment as  
16 a matter of law discussing plaintiff's case is denied  
17 except for the first motion that you made. I have to look  
18 into that.

19 MS. ZWILLING: Your Honor, if I may, I wasn't  
20 finished. I do have some other grounds. I was simply  
21 finished with that aspect.

22 THE COURT: Okay, go ahead.

23 MS. ZWILLING: It is also our position that  
24 there's been no evidence that any policy that would have  
25 caused employees to inadequately investigate -- that might

1 cause employees to conduct inadequate investigations could  
2 have led to the plaintiff's constitutional rights being  
3 violated.

4 To the extent that Ms. Ramos' attempts to ground  
5 her Monell claim on the alleged policy of failure to  
6 respond to complaints, it's critical that -- it's not very  
7 clear, Judge. It does not seem that anybody ever claimed  
8 prior to the alleged assault on the plaintiff that they  
9 were subjected to involuntary sexual abuse.

10 I believe that the most that can be said for the  
11 plaintiff's version of the facts is that prior to the  
12 alleged attack on the plaintiff, Lowrita Rickenbacker  
13 reported the claim of consensual conduct with Gary  
14 Feinberg. Now, consensual conduct between a medical staff  
15 and an inmate is, to say the least, it's reprehensible,  
16 it's inexcusable, it's unethical. I'm not going to  
17 suggest it's not, but it's not a constitutional violation.

18 That's critical because for a policy of failing  
19 to address complaints, for that to suffice under Monell  
20 and Canton, it has to be a policy of failing to address  
21 constitutional violations. Not a policy of failing to  
22 address complaints, not a policy of disregarding the best  
23 interest of the inmates, but a policy of disregarding  
24 complaints of constitutional violations.

25 So any claim that the plaintiff might make that



1 a policy of failing to respond, we believe should be  
2 dismissed as a matter of law.

3 To the extent that there was no report of  
4 involuntary sexual conduct before December 29th, it is our  
5 position that there can be no evidence of a policy in  
6 existence at that time of a failure to investigate. And  
7 for that reason plaintiff should not be permitted to get a  
8 claim to the jury.

9 MR. NORINSBERG: Very briefly.

10 Ms. Rickenbacker just testified today that she  
11 never said it was consensual. She never told that to  
12 Manderino. When she reported it to Lundquist, reported it  
13 to Olivencia, reported it to McCarrick, it was always as  
14 inappropriate sexual touching. It was never complained of  
15 as a consensual act.

16 So that might be their defense to argue that but  
17 that's not what our testimony has been through  
18 Ms. Rickenbacker.

19 The jury is free to credit the testimony of  
20 Ms. Rickenbacker and reject the testimony offered by the  
21 defendants.

22 And on that basis, Judge, I would ask you to  
23 deny the motion on that ground as well.

24 MS. ZWILLING: Judge, when asked on  
25 cross-examination, are you sure when you reported the

1 alleged his sexual abuse, Ms. Rickenbacker conceded she  
2 did not know if it was in 2005 or 2006.

3 THE COURT: There is an issue of fact at best as  
4 to whether the conduct to Ms. Rickenbacker was consensual.  
5 She just testified this morning that it wasn't consensual.  
6 And the jury could find that very easily. So I don't know  
7 where you're going to have a motion decided in your favor  
8 based upon that testimony.

9 If that's your motion, again, denied.

10 MS. ZWILLING: We also contend that there's been  
11 no evidence adduced by the plaintiff that any of the  
12 proffered policies played a role in prompting Gary  
13 Feinberg to sexually abuse --

14 THE COURT: I'm sorry, I didn't hear that.

15 MS. ZWILLING: There's been to evidence adduced  
16 by the plaintiff that any of the supposed policies played  
17 a role in prompting Gary Feinberg to abuse her.

18 THE COURT: No. It would play a role in getting  
19 rid of Gary Feinberg.

20 MS. ZWILLING: That may or may not be true,  
21 Judge, but it's got to be the moving force behind the  
22 constitutional violation.

23 It is our position that to show some connection  
24 between the alleged policy and the constitutional  
25 violation, the plaintiff would have to show that Gary

1     Feinberg was emboldened by the policy of inadequate  
2     investigation to --

3             THE COURT: I don't know where you got that  
4     from.

5             MS. ZWILLING: Well, judge, if he doesn't know  
6     it's going to happen.

7             THE COURT: Sounds good.

8             MS. ZWILLING: Precisely, Judge.

9             If the policies didn't lead him to believe that  
10    he could get away with it, then they could not have been  
11    the cause of his acts.

12            And there's no proof whatsoever that his  
13    misconduct, that he knew that it wouldn't be reported or  
14    investigated. It's possible, but a verdict can't be based  
15    upon possibility.

16            It's also possible that he believed other  
17    employees would have reported his misconduct but he felt  
18    nobody would believe the inmates so he didn't care or he  
19    didn't care that he was going to be reported and fired  
20    because he was leaving his job the following week, or he  
21    thought his union would protect him of any complaints.  
22    There's no evidence of any of these things, we don't have  
23    to prove it, Judge. We're the defendants.

24            My point is only that there isn't any evidence  
25    adduced by the plaintiff to show that these policies

1199

1 played any role in Gary Feinberg deciding to commit these  
2 intentional acts which he is alleged to have committed.  
3 And again, proximity, opportunity is not enough. It has  
4 to be the moving force.

5 THE COURT: Have you concluded?

6 MS. ZWILLING: That aspect of our motion, Judge.

7 THE COURT: Denied.

8 Next.

9 MS. ZWILLING: With respect to the failure to  
10 train claim, your Honor, the City of Canton case makes  
11 plain that a plaintiff has to show that municipal policy  
12 makers actually disregarded a risk of future violations,  
13 and we believe that there has been no evidence adduced by  
14 the plaintiff to that effect.

15 THE COURT: Is this another motion?

16 MS. ZWILLING: Yes, Judge.

17 THE COURT: Denied.

18 I think that I'm going to make a record here.

19 MS. ZWILLING: I think that I'm making a record,  
20 Judge. This is already five times longer than I've ever  
21 gone on in a Rule 50.

22 We also contend that the plaintiff failed to  
23 prove a prima facie case because they put on no showing  
24 that -- no evidence by which the jury could determine that  
25 the programs of training and supervision were deficient.

1200

1           There's been no evidence put before the jury  
2       which they could utilize to rate a program of jail  
3       administration or Department of Health administration as  
4       good, bad, outstanding or terrible.

5           The proper way to run a jail or a Department of  
6       Health services is not something within the knowledge of a  
7       layperson. A layperson has no knowledge as to what the  
8       proper standards and practices are to run those sorts of  
9       agencies.

10          And plaintiff never called any expert to give  
11       evidence as to what those standards are and to point out  
12       what the County did which -- in failing to come up to  
13       those standards.

14          Now, they put on supervisor and corrections  
15       personnel and medical personnel and never once asked them  
16       what are the national standards in their profession?  
17       What's required by national standards in terms of training  
18       and reporting and supervision? Plaintiff's attorneys  
19       didn't pull out the usual national standards and  
20       guidelines books for the administration of agencies and  
21       questioned them as to whether the County complied with  
22       those standards.

23          That's something which I know is easily done  
24       because I have used those standard books all the time in  
25       cross-examining law enforcement experts in these cases.

1201

1           Again, no evidence as to what the proper  
2     standard was and how the County failed to come up to that  
3     standard.

4           Now, the plaintiff did adduce some evidence  
5     about what the program was and then cast out some innuendo  
6     that it was not what it should be, and Mr. Norinsberg  
7     suggested that, in his opinion, the jail medical unit were  
8     improperly run, but he's not an expert, he's not a  
9     witness. And his view on how a sheriff should run a law  
10    enforcement agency or how the Commissioner should run the  
11    Department of Health, is not a basis upon which the jury  
12    could conclude that the announcement of the policy makers  
13    or managers are deficient.

14          Now, the plaintiff did adduce some evidence that  
15    some but not all of the persons who got the complaint  
16    didn't know how to respond. But they gave us no evidence  
17    whether that was because they were poorly trained or  
18    because they ignored their training or they forget what  
19    the rules were. We don't know what the source of their  
20    confusion is. They have to show that the failure to  
21    respond was due to the inadequacies of the training.

22          But again, Judge, Canton makes clear that a  
23    plaintiff can't even suffice by showing that individual  
24    employees were improperly trained or managed. Canton says  
25    exactly that, that the plaintiff can't get their case to

1 the jury by showing improper training or supervision of  
2 individual employees. They must demonstrate the  
3 deficiencies in the program itself, and the plaintiff  
4 hasn't done that.

5 In the absence of any evidence presented by the  
6 plaintiff as to what the good and proper practices are for  
7 running a law enforcement agency or a Department of  
8 Health, it is our position that the plaintiff is not  
9 entitled to have the jury substitute their own judgment  
10 for professional standards and determine that they  
11 disliked the County's practices.

12 THE COURT: Have you concluded that phase?

13 MS. ZWILLING: That phase, Judge, yes.

14 THE COURT: The plaintiff doesn't need an expert  
15 in this case. The plaintiff doesn't need national  
16 standards in this case.

17 It's the clearest, most simple Monell that I  
18 have ever heard.

19 There's no policy to respond to a female inmate  
20 who says that she was sexually abused by the physician's  
21 assistant. They did nothing. They didn't know what to do  
22 or couldn't care less. If ever there was a policy that  
23 was clear, it was that.

24 You didn't have to show what the good and proper  
25 standards are. Everybody knows what the good and proper

1203

1 standards are, that when a female inmate complains about  
2 being sexually abused, you have to do something about it.  
3 And their policy is to do nothing but shuttle it off from  
4 division to division, from the internal security, to the  
5 CIB, to the Internal Affairs. I don't know who else. And  
6 end up doing nothing. That's what I heard. So no expert  
7 is needed. It's common sense.

8 Denied.

9 Anything else?

10 MS. ZWILLING: I'm wrapping up, Judge. Just a  
11 quick glance over my notes.

12 That would conclude our Rule 50 motion, Judge.

13 THE COURT: Okay. The only portion of your  
14 motion I have reserved decision on is your failure to  
15 exhaust.

16 No formal grievance was filed. You say this is  
17 under the Prisoner Litigation Reform Act, right?

18 MS. ZWILLING: Yes, it's 42?

19 THE COURT: That's what I'm going to look into.

20 MS. ZWILLING: Thank you, Judge.

21 THE COURT: That decision's reserved.

22 Anything else at this time?

23 Tomorrow morning at 9:30.

24 You'll have your witnesses here?

25 MS. FLYNN: Yes, your Honor.



1204

1 THE COURT: You, I'm talking to.

2 MS. FLYNN: Yes.

3 THE COURT: Okay.

4 (Whereupon, court recessed for the day until

5 Thursday, November 19, 2009 at 9:30 a.m.)

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LOWRITA RICKENBACKER

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6

VOIR DIRE EXAMINATION

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997

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1015

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11

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13

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